

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 THREELINE IMPORTS, INC.,

15-CV-2333 (AMD)

5 Plaintiff,

United States Courthouse
Brooklyn, New York

6 - versus -

January 17, 2017
9:30 a.m.

7 GRIGORIY VERNIKOV, et al.,

8 Defendants.
9 -----x

10 TRANSCRIPT OF CIVIL CAUSE FOR BENCH TRIAL
11 BEFORE THE HONORABLE ANN DONNELLY
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

14 Attorney for Plaintiff: ROSENBERG FORTUNA & LAITMAN LLP
15 666 Old Country Road
16 Suite 810
17 Garden City, New York 11530
18 BY: ANTHONY R. FILOSA, ESQ.
19 DAVID I. ROSENBERG, ESQ.

20 Attorney for Defendant: EPSTEIN DRANGEL LLP
21 60 East 42nd Street
22 Suite 2520
23 New York, New York 10165
24 BY: JASON M. DRANGEL, ESQ.
25 SPENCER J. WOLGANG, ESQ.

Court Reporter: LINDA D. DANIELCZYK, RPR, CSR, OCR
Phone: 718-613-2330
Fax: 718-804-2712
Email: LindaDan226@gmail.com

Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

1 THE COURTROOM DEPUTY: All rise.

2 THE COURT: Everyone can have a seat.

3 THE COURTROOM DEPUTY: This is civil cause for a
4 bench trial, Docket Number 15-CV-2333, Threeline Imports, Inc.
5 versus Vernikov, et al.

6 Counsel state your appearance, plaintiff first.

7 MR. FILOSA: For the plaintiffs, Anthony Filosa,
8 Rosenberg Fortuna & Laitman 666 Old Country Road, Garden City,
9 New York. Good morning, Your Honor.

10 MR. ROSENBERG: Good morning, Your Honor, also for
11 the plaintiff, David Rosenberg, same firm.

12 MR. DRANGEL: Good morning, Your Honor, Jason
13 Drangel of Epstein & Drangel, appearing for the defendants.

14 MR. WOLGANG: Good morning, Your Honor, Spencer
15 Wolfgang, also for the defendants.

16 THE COURT: All right. As I gather by seeing you
17 all here, you were not able to work this out; is that right?

18 MR. FILOSA: Yes, Your Honor. Your Honor, and your
19 staff can confirm we put in a late shift following Thursday's
20 pretrial conference, so it's not for want of trying, Your
21 Honor.

22 THE COURT: And this is your client, but you
23 obviously expressed to them that having reviewed most of the
24 evidence in this case exhaustively, I really think this is
25 something that should not be taking up court time. I'll give

1 you the trial, obviously, but it seems to me some kind of a
2 personal dispute between all of you. I really don't
3 understand why you can't work it out.

4 I mean as I say, it's fairly obvious to me that
5 there's some kind of bad blood there and I don't
6 hundred percent appreciate using the federal court to resolve
7 it. But we're here, so I guess we'll get going.

8 All right. So because this is a bench trial, you
9 can -- do you have any statements you want to or not? I'm
10 fairly familiar with the position of both sides, but if you
11 want to make an opening statement?

12 MR. FILOSA: Yes. May I, Your Honor.

13 THE COURT: Sure. Go right ahead.

14 I'm just going to remind the parties that I would
15 like you to speak slowly.

16 Oh, one other thing. We not need to have -- I know
17 there's an interpreter here, so we'll have the interpreter's
18 appearance on the record.

19 Have you been sworn in?

20 THE INTERPRETER: No.

21 (Whereupon, the interpreter was sworn.)

22 THE COURTROOM DEPUTY: Please put your name on the
23 record, please.

24 THE INTERPRETER: Bakhodir Abdullaev.

25 THE COURT: All right. Now, just because we do have

OPENING STATEMENT - FILOSA

1 an interpreter, I am going to ask everybody to speak slowly.
2 I want to make sure that we don't drive the court reporter
3 insane. So just bear in mind that there's no need to speak at
4 lightning speed and it's probably easier for the interpreter
5 as well.

6 All right, go ahead.

7 MR. FILOSA: May it please the Court. We are here
8 to determine one thing, and one thing only, who is the owner
9 of the trademark chicken and egg logo that is used on imported
10 pasta products sold by the plaintiff, Threeline Imports.

11 Now despite the parties' disputed position on
12 collateral matters, on the issues which are material to the
13 determination of who owns the chicken and egg, namely when the
14 mark was first used in commerce, and whose goods the mark
15 identifies, the facts are beyond dispute and in some instances
16 the parties have stipulated to these facts, and these facts
17 point to Threeline as the owner of the chicken and egg mark.

18 The parties do not dispute that the mark was created
19 in 2012 to be used for a pasta label on a product manufactured
20 by German pasta manufacturer, ALB-GOLD.

21 THE COURT: Slow down just a little bit.

22 MR. FILOSA: Certainly.

23 You will learn that the defendant, Mr. Vernikov, was
24 a full-time salaried employee of Threeline between August 2009
25 and April of 2013.

OPENING STATEMENT - FILOSA

1 You will hear that Threeline, through its affiliate
2 company, Interpage Co. Inc., entered into an exclusive sales
3 and importation agreement with ALB-GOLD.

4 Mr. Vernikov concedes that at no time was he an
5 officer, director, shareholder or employee of Interpage Co.
6 Inc.

7 The evidence will show that in late July and early
8 August, 2012, the principals of Threeline, Malvina Kerzhner
9 and Leonid Kerzhner, tasked their employee, Mr. Vernikov, with
10 assisting in the creation of a label to be displayed on the
11 ALB-GOLD pasta products.

12 The undisputed evidence shows that between August
13 and the first week of October 2012, Mr. Vernikov submitted not
14 less than seven labels to Leonid and Malvina for Threeline's
15 approval. Each label was rejected by Threeline.

16 Now that Mr. Vernikov submitted these labels to
17 Threeline over such a lengthy period of time begs the question
18 why, if the buck stopped with Mr. Vernikov with respect to the
19 approval of the label, did the buck not truly stop with
20 Mr. Vernikov with respect to the creation of the label. The
21 evidence will show that assisting in the design and the
22 creation of labels was amongst Mr. Vernikov's duties as an
23 employee of Threeline.

24 The evidence will further show that when in
25 October 2012 Mr. Vernikov submitted yet another label to

OPENING STATEMENT - FILOSA

1 Leonid in which Leonid had rejected, Leonid grew frustrated at
2 the length of time it was taking, over two months, for
3 Mr. Vernikov to design a label which met Threeline's approval.

4 You will hear that thereafter, Leonid instructed
5 Malvina to locate an image of a brown chicken on her computer,
6 which she did; to locate an image of eggs, which she did as
7 well. You will hear that these two images were combined and
8 were provided to ALB-GOLD to place on the label of ALB-GOLD
9 pasta products, which Threeline purchased from ALB-GOLD.

10 Now, turning to the first use in commerce of the
11 chicken and egg mark, you will hear from the defendants that
12 the first use came when the defendants allegedly, quote, sold
13 the ALB-GOLD pasta products bearing the mark to plaintiff.

14 Now, I use the word "sold" in quotes because the
15 evidence will show that there was no such sale by defendants
16 to Threeline. The undisputed evidence will show that
17 defendants received no fee, no commission, no compensation or
18 any other consideration from Threeline from this so-called
19 sale.

20 The undisputed evidence will show there it was
21 Threeline that purchased the product from ALB-GOLD; that
22 Threeline paid for the product; that Threeline paid for the
23 ocean freight; that Threeline paid for the inland
24 transportation of product; that Threeline paid for the
25 Customs' broker fees. The product was shipped by ALB-GOLD to

OPENING STATEMENT - FILOSA

1 Threeline and was delivered and stored at Threeline warehouse
2 in January 2013.

3 Defendants have the stipulated that in January 2013,
4 Threeline started selling the ALB-GOLD pasta product bearing
5 the chicken and egg mark to Threeline's customers. It is
6 these sales which constitute the first use in commerce of the
7 chicken and egg mark. And it's these sales which make
8 Threeline the owner of all right, title, and interest into a
9 valid mark in the chicken and egg label.

10 In 2014, Threeline applied for and received federal
11 registration for the chicken and egg mark with the United
12 States Patent & Trademark Office. This registration creates a
13 presumption in favor of Threeline that the mark is valid and
14 that Threeline is the owner of the mark.

15 THE COURT: I'm sorry, when was that, April of 2014?

16 MR. FILOSA: The application was April of 2014, the
17 registration was November 2014, Your Honor.

18 THE COURT: So they applied in 2014, they got the
19 trademark in November of 2014.

20 MR. FILOSA: Correct.

21 THE COURT: All right. So you're saying the date of
22 the action on the trademark then is November?

23 MR. FILOSA: That's when the federal registration
24 received the first use in commerce which, again, is the
25 relative date. It began in January in 2013 when Threeline

OPENING STATEMENT - FILOSA

1 started selling the products to its customers.

2 THE COURT: Okay.

3 MR. FILOSA: Now, in order for defendants to
4 overcome the presumption of validity created by Threeline's
5 registration of the trademark, defendants must show by a
6 preponderance of the evidence that they were using the mark in
7 commerce before plaintiff, and that such use was made in a way
8 sufficiently public to identify and distinguish in marked goods
9 in an appropriate segment of the public mind as those of the
10 adopter of the mark.

11 Defendants will not be able to sustain this burden
12 of proof. Again, regarding the defendants' alleged first use,
13 there was no sale by defendants to Threeline of the ALB-GOLD
14 pasta products.

15 Now, you will hear from the defendants that they are
16 the owner of the chicken and egg mark because that image was
17 placed on the ALB-GOLD pasta product with a logo or logo known
18 as Delicious Wonders, a logo which defendants claim to own.

19 Do not let defendants confuse the issue. As this
20 Court has advised defendants on numerous occasions, in both
21 awarding preliminary injunction enjoining the defendants' sale
22 of products bearing the chicken and mark, and in denying the
23 defendants' successive motions to vacate that preliminary
24 injunction, the only mark in suit is the chicken and egg
25 image.

OPENING STATEMENT - FILOSA

1 So let me state it unequivocally and without
2 reservation. Threeline has no quarrel or dispute with
3 defendants' sale of pasta products bearing Delicious Wonder's
4 label or logo. The world is big enough for two and 200 German
5 pasta manufacturers and salesman.

6 It is defendants' use of the chicken and egg mark
7 for which Threeline applied for and received federal trademark
8 registration which Threeline objects, and which Threeline
9 contends constitutes and trademark infringement and
10 counterfeit.

11 While defendants claim to be the owner of the
12 chicken and egg mark, it was not until well after Threeline
13 commenced this case that defendants first petitioned for
14 cancelation of Threeline registration of the chicken and egg
15 mark.

16 Defendants' own sworn testimony will show that as
17 early as May 2014, defendants were aware that Threeline was
18 selling pasta products bearing what defendants contend is
19 their chicken and egg trademark and did nothing about it.

20 Defendants did not contact an attorney; did not
21 contact Threeline; they didn't send a cease and desist letter;
22 they certainly didn't commence any litigation.

23 Now why is that you ask? The evidence will show
24 that Mr. Vernikov certainly was not ignorant regarding one's
25 rights to register a trademark, since during the time he was

OPENING STATEMENT - FILOSA

1 employed by Threeline, the evidence will show that Threeline
2 registered not less than four trademarks, and that
3 Mr. Vernikov corresponded with Threeline's general counsel
4 regarding the registration of one of those marks.

5 Rather, the evidence will show that in a telling
6 moment of candor before this Court, that Mr. Vernikov
7 testified under oath when asked why he did nothing to protect
8 his alleged rights in the chicken and egg mark, he responded,
9 quote, it's the name that's important, alluding to his alleged
10 Delicious Wonder's logo, quote, not the chicken.

11 Now this deposition you will learn that Mr. Vernikov
12 testified in response to why he did nothing in May 2014 upon
13 learning of Threeline sales of product there and what he
14 contends is his mark, he responded that Threeline's, quote,
15 not my competitor.

16 These two sworn statements by defendant, namely that
17 the chicken is allegedly not important and Threeline is not a
18 competitor, constitute binding admissions which defeat any
19 claim by defendants they have been harmed by Threeline's use
20 of the mark.

21 Now an element to the parties' claims here is that
22 the other party's use of the mark presents a likelihood of
23 confusion. The evidence will show that what we are dealing
24 with here are counterfeit products sold by defendants.

25 The package of the defendants' products is

OPENING STATEMENT - FILOSA

1 essentially identical to packaging used by Threeline. Both
2 contain the identical images of a brown chicken and eggs.
3 Both contain between six wheat stalks protruding from the
4 banner which says "egg pasta" and underneath such banner both
5 labels contain the words "pasta from pure durum wheat semolina
6 made in Germany," and use the same sentence structure and word
7 emphasis in this phrase.

8 Because counterfeit marks are inherently confusing,
9 the evidence will show that Threeline satisfied its element of
10 its claim.

11 Now the evidence will show that Mr. Vernikov
12 defendant Threeline's employment in April 2013. Thereafter,
13 Threeline learned that defendants were selling counterfeit of
14 the pasta product bearing the chicken and egg mark.

15 One measure of damages for a successful claim in a
16 trademark claim is the defendants' profits plus any damages
17 sustained by the plaintiff, attorneys fees, and the costs of
18 the action.

19 Treble damages is mandatory if the Court finds the
20 defendants' action were willful. Here the evidence will show
21 that defendants' conduct was willful, and that the willfulness
22 is evidenced by the fact that the Threeline registered
23 trademark was created by Threeline and first in commerce by
24 Threeline at a time when Mr. Vernikov was a employee of
25 Threeline; that defendants' were aware of Threeline's first

OPENING STATEMENT - FILOSA

1 use in commerce of the trademark when Threeline sold the
2 contents of the first two containers of a pasta product
3 bearing the chicken and egg mark to Threeline's customers.
4 And that defendants began infringing and counterfeiting the
5 Threeline mark after Mr. Vernikov left Threeline's employment.

6 The evidence will also show that defendant continued
7 to sell counterfeit products after they received Threeline's
8 cease and desist letters in March and April 2015.

9 The cases hold that this alone, meaning sales
10 following receipt of a cease and desist letter constitutes
11 wilfulness which entitled Threeline to treble damages.

12 You will see invoices dated following the date that
13 this Court ordered a preliminary injunction enjoining the
14 defendant from further sales of the product showing that
15 defendant had continued to sell the product. This is the
16 epitome of wilfulness and bad faith on the part of the
17 defendants.

18 The evidence will also show that Threeline's
19 entitled to reasonable attorneys' fees. Under the statute,
20 the Court may, in exceptional cases, award reasonable both
21 attorneys' fees to the prevailing party. Exceptional cases
22 include willful infringement.

23 Because counterfeiting infringement creates
24 irreparable harm for Threeline, Threeline is entitled also to
25 the continuation of the preliminary injunction previously

OPENING STATEMENT - DRANGEL

1 entered by the Court and the issuance of a permanent
2 injunction on the terms identified in Threeline's complaint.

3 For all these reasons, the evidence shall show that
4 Threeline's entitled to judgment on all claims set forth in
5 its complaint, and this is the relief for which Threeline
6 respectfully prays. Thank you.

7 THE COURT: Thank you.

8 Counsel?

9 MR. DRANGEL: Good morning. May it please the
10 Court.

11 The principal issue for consideration is not what
12 came first, the chicken or the egg, instead, who was first to
13 use the chicken and the egg as that phrase is understood under
14 the U.S. trademark law. That may be a bit corny, but it's
15 true.

16 Throughout this case, Threeline has argued that this
17 issue is cut and dry. Simply put, Threeline steadfastly
18 argues that:

19 One, since Gregory Vernikov was a W2 employee of
20 Threeline, when the initial two containers of ALB-Gold pasta
21 bearing the chicken and egg trademark was shipped to
22 Threeline's warehouse; and two, Threeline owns a trademark
23 registration for the chicken and egg trademark. That proves
24 that the chicken and egg trademark belongs to Threeline.

25 The problem with Threeline's argument is that the

OPENING STATEMENT - DRANGEL

1 facts in evidence do not support this argument.

2 First, with regard to Mr. Vernikov's employment, as
3 Your Honor correctly noted in footnote 15 of our summary
4 judgment opinion, and I quote, the parties dispute whether
5 Vernikov was a full-time or part-time employee of Threeline.
6 However, whether he was a full or part-time employee, there is
7 no dispute that he was also operating his own import/export
8 business from Threeline's warehouse. Therefore, the more
9 relevant question is whether Vernikov placed the order for
10 pasta from ALB-GOLD on behalf of Threeline or on behalf of his
11 own company, end quote.

12 That is a hundred percent accurate. However,
13 despite my attempts to have Threeline stipulate to these
14 facts, Threeline still argues that everything my clients did
15 while in the Threeline warehouse was solely for the benefit of
16 Threeline.

17 Incredibly, Threeline will try to convince Your
18 Honor that in 2009, Gregory Vernikov stepped away from a
19 business that took him over 15 years to create, to turn over
20 all of his relationships, distribution contracts and industry
21 knowledge for a prestigious 48,000-dollar a year part-time job
22 at a buyer for Threeline.

23 Gregory Vernikov founded Interpage in 1993 upon
24 coming to America from the Ukraine. Essentially through a
25 large number of exclusive and nonexclusive agreements, Gregory

OPENING STATEMENT - DRANGEL

1 built the Interpage business to import and sell quality food
2 products, primarily from Eastern Europe to relevant markets in
3 the United States.

4 Gregory Vernikov met Lenny Kerzhner, the general
5 manager of Threeline, in or about 2003. At the time Lenny
6 Kerzhner up at showed up at Gregory Vernikov's Interpage
7 warehouse in Brooklyn, Lenny was purchasing products for
8 relative markets located in Philadelphia.

9 Lenny and his wife, Maya, began to work for a
10 company called Threeline in or about 2004, 2005. The company
11 was then called Trilini Imports.

12 At the time, it was a wholesale company focused on
13 selling confectionary products. Threeline is somehow related
14 to a company called Trilini International, most notably run by
15 a man named Roman Katsnelson that sells ingredients for
16 confectionary products primarily in Europe.

17 Gregory Vernikov and Interpage began to sell Lenny
18 and Maya through their Threeline company on or about 2004,
19 2005. He sold them products that were they were not familiar
20 with, particularly pastas.

21 Gregory Vernikov moved his Interpage company into
22 the Threeline warehouse in or about 2006 as a means to reduce
23 overhead. In exchange for free rent and commissions paid to
24 Interpage, Gregory Vernikov completed task and sold products
25 at cost to Threeline with Threeline paying him import and

OPENING STATEMENT - DRANGEL

1 transport fees. All the while, Interpage continued to sell
2 and to an expanding customer base.

3 There is no question that Gregory Vernikov ran his
4 Interpage business in an unorthodox fashion, but there is
5 nothing illegal about it. In fact, it makes a lot of sense.

6 By permitting third parties to pay for goods
7 Interpage purchased through its relationships with foreign
8 manufacturers, including import and transport fees, in some
9 cases permitting direct shipment to the goods to customers and
10 having customers pay commissions on the purchases directly to
11 Interpage, and/or having the manufacturer pay to Interpage,
12 given that Gregory did not pay rent to Threeline to run its
13 business or to store its goods, other than frozen goods which
14 is separately during that time period through a third party,
15 permitted Interpage and Gregory to have little to no overhead
16 and charge its customers a fair price.

17 Sometimes Threeline and other customers would pay
18 Interpage for purchased items directly. Sometimes Threeline
19 and other customers would pay Interpage manufacturer directly,
20 always making clear on why are payments on behalf of
21 Interpage.

22 Sometimes Threeline would have the wires paid by
23 Interpage's foreign manufacturer to -- sorry, Interpage's
24 foreign manufacturer by Trilini International, the company
25 that is run by Roman Katsnelson.

OPENING STATEMENT - DRANGEL

1 For his troubles, Mr. Katsnelson and Trilini
2 International were paid 3 percent commission. Each of these
3 transactions also recognize Interpage as the party who the
4 transaction was being made for, specifically on behalf of
5 Interpage.

6 Regardless of who paid, for nearly all imported
7 products, Gregory Vernikov acted as the importer and
8 co-signee, he and Interpage company, and was identified as
9 such on import records including bills of lading for all
10 Interpage products. As co-signee, it is IP that is the owner
11 and therefore liable and responsible for the goods until they
12 arrive at a warehouse.

13 After Gregory divorced from his wife in or about
14 2008, 2009, though, Threeline and Gregory agreed that monthly
15 commissions would no longer be paid to Interpage, the company,
16 instead, Gregory Vernikov would receive approximately the same
17 monthly commission for the same services and sales as a
18 part-time W2 employee.

19 THE COURT: Can I just ask? What is the reason, I'm
20 sure we'll get evidence, because it's confusing to me, why
21 doesn't Threeline just order directly from whomever they want
22 to get the pasta? I don't get that. I guess I'll find out,
23 right?

24 MR. DRANGEL: Well, that's the whole -- Gregory has
25 the relationship with them. He has the relationship with

OPENING STATEMENT - DRANGEL

1 multiple pasta manufacturers. And because of that, the
2 relationship goes through Interpage.

3 THE COURT: Okay. And why do they give him a W2? I
4 mean --

5 MR. DRANGEL: Because he was originally paid
6 commissions, and then after as a result of the divorce that he
7 was involved in, they worked out instead because his wife was
8 somewhat involved with the prior company.

9 THE COURT: Just so they wouldn't have to give money
10 to the wife?

11 MR. DRANGEL: Yes, it was a divorce issue.

12 THE COURT: That's a little bit sketch think on both
13 sides. All right, go ahead.

14 MR. DRANGEL: Gregory continued to run his Interpage
15 business from the Threeline warehouse as he had done from 2006
16 to 2009. Gregory paid taxes for his W2 wages and on proceeds
17 from his Interpage business. As you can see from his tax
18 returns, by 2013 this arrangement was hurting his business so
19 he left.

20 As far as the issue of who owned the chicken and egg
21 trademark, it is clear that Gregory had an equal right to own
22 it through Interpage, as Threeline did during the relevant
23 time period. The parties stipulate that the chicken and egg
24 trademark was first applied to a pasta product originating
25 from a German manufacturer named ALB-GOLD.

OPENING STATEMENT - DRANGEL

1 While Lenny Kerzhner attended the Anuga food show in
2 Germany --

3 THE COURT: The what show?

4 MR. DRANGEL: Anuga, Anuga-N-U-G-A, food show in
5 Germany in October 2011 with Gregory Vernikov, it was Gregory
6 who secured the relationship with ALB-GOLD and completed the
7 distribution agreement with ALB-GOLD for Interpage.

8 Despite Threeline's hesitancy to acknowledge it,
9 there can be no dispute that Gregory's business has always
10 been called Interpage, dating back to 1993. Sometimes it was
11 Interpage Co., sometimes Interpage International, sometimes
12 it's a corporation, and sometimes it's a d/b/a or assumed
13 name, tradename, service mark, but it was always known as
14 Interpage to manufacturers, distributors, retailers and
15 consumers.

16 As you will see during the course of this trial, the
17 documented evidence will show that Gregory and his business
18 were identified as such. Threeline would always stipulate,
19 though, that, and I quote, in or about 2005, Threeline was
20 aware that Vernikov did business in some form under an assumed
21 name, Interpage, end quote.

22 This is an important fact only recently because
23 early on in this case, it was Threeline's position that
24 Gregory entered the ALB-GOLD agreement through Gregory
25 Vernikov's Interpage Co. company, but that was simply for

OPENING STATEMENT - DRANGEL

1 Threeline's benefit.

2 Maya, Lenny and Alex Kerzhner all testified to this
3 fact during the depositions. Incredibly, in making a summary
4 judgment motion, Threeline changed its tune. It now appears,
5 from counsel's opening statement, to be Threeline position
6 that a New York entity company called Interpage Co. Inc. is
7 the party to the ALB-GOLD agreement with ALB-GOLD, not Gregory
8 Vernikov or his Interpage company.

9 As a stipulated fact, Interpage Co. Inc. is a
10 company incorporated on February 18th, 2009 by Roman
11 Katsnelson, the individual from Trilini International that I
12 mentioned earlier.

13 The parties further stipulate that Gregory Vernikov
14 is not an officer, director, shareholder or employee of
15 Interpage Co. Inc. In fact, despite Threeline's claim that
16 Gregory was offered a part of this company, Gregory had no
17 knowledge of this company.

18 Roman Katsnelson, the incorporator of ICI,
19 acknowledged that, and I quote, that this business does
20 nothing. This company is basically -- doesn't do anything,
21 end quote, with no business cards, letterhead, email accounts,
22 filing no tax returns, no QuickBook accounts and having a bank
23 account with few or minor transactions.

24 In light of all this, Threeline argues that somehow
25 its owners, Maya and Leonid, authorized and/or required that

OPENING STATEMENT - DRANGEL

1 Gregory Vernikov sign the ALB-GOLD contract as an employee of
2 Threeline on behalf of the Interpage Corp. Inc., Company Inc.,
3 and the company has stipulated they are neither shareholders
4 or employees of.

5 THE COURT: Can I just ask you a question? What is
6 your position, what's the reason that your argument that they
7 set up this company that doesn't do anything is the exact same
8 name as the defendants?

9 MR. DRANGEL: Well, that's why it's shocking that it
10 exists to start with.

11 THE COURT: You have a -- there's no jury here so do
12 you have an argument as to why you say they did that?

13 MR. DRANGEL: Only they would know why they did it,
14 but my client was not part of that company at all.

15 THE COURT: So his company with the same name
16 already existed.

17 MR. DRANGEL: Right.

18 THE COURT: So they just started another fake
19 company that doesn't do anything with the exact name.

20 All right, I get it. Go ahead.

21 MR. DRANGEL: Other than the identification of ICI
22 in the caption and the signature line, nothing else in the
23 course of the relationship -- strike that, sorry.

24 Yes, other than the identification of the Interpage
25 company in the caption and the signature line of the ALB-GOLD

OPENING STATEMENT - DRANGEL

1 agreement, nothing in the course of the relationship between
2 Gregory and Threeline and the execution and pursuit of the
3 ALB-GOLD agreement relationship supports that this is actually
4 what happened.

5 While the parties dispute whether Alex Kerzhner, son
6 of Maya and Leonid, drafted the ALB-GOLD agreement, there is
7 no dispute that a predecessor agreement for a pasta product
8 called Franz Tress pasta was drafted by Alex Kerzhner and
9 nearly identical to the ALB-GOLD agreement.

10 Both the Franz Tress agreement and ALB-GOLD
11 agreement contain Gregory Vernikov's home address, signed by
12 Gregory Vernikov as president, contain his signature and the
13 stamp of his Interpage Co. company dating back to 1993.

14 Threeline does not dispute that Interpage is proper
15 party to the Franz Tress agreement. Further, an amendment to
16 the agreement signed by Gregory Vernikov on behalf of
17 Interpage entitled Interpage to commissions on sales of the
18 ALB-GOLD product.

19 Even before the ALB-GOLD agreement was executed,
20 Gregory worked with ALB-GOLD to design a label for the
21 ALB-GOLD pasta product. It was decided by Gregory Vernikov
22 that the ALB-GOLD pasta product would bear the Delicious
23 Wonders trademark, a trademark owned by a company, Delicious
24 World, that Gregory was an officer and shareholder off.

25 Delicious World primarily sold cakes and pastry

OPENING STATEMENT - DRANGEL

1 products under the Delicious World trademark -- Delicious
2 Wonders, sorry about that.

3 Given that Gregory, through Interpage, paid for the
4 initial shipments and initially imported the Delicious Wonder
5 products, that it financed the incorporation, development of
6 marketing materials and paid for early exhibits of the
7 products at trade shows, Delicious Wonders permitted Gregory
8 and Interpage to use the Delicious Wonders trademark first on
9 a cod liver product, and then on an ALB-GOLD pasta product.

10 Given that the Interpage name appeared on the
11 Delicious Wonders pastry and cake products as importer, as
12 well as the cod liver products, wholesalers, retailers and
13 customers were likely to associate Delicious Wonders trademark
14 with Interpage.

15 Accordingly, Interpage chose to use the Delicious
16 Wonders trademark as an identification of sorts; i.e. the
17 trademark, on the ALB-GOLD pasta product. Despite allegations
18 that Lenny was surprised to learn that the ALB-GOLD pasta
19 product bore the Delicious Wonders trademark when the first
20 two containers arrived in the Threeline warehouse, the
21 evidence shows widespread knowledge of this fact by everyone
22 at Threeline.

23 For instance, the early product packaging labels,
24 samples that Lenny acknowledges reviewing, all prominently
25 bore the Delicious Wonders trademark. They likewise indicated

OPENING STATEMENT - DRANGEL

1 manufactured for Interpage Co. prominently.

2 Threeline became so concerned that the Delicious
3 Wonders trademark acted as a source identifier for Gregory
4 Vernikov and Interpage, that they undertook to conceal the
5 fact that they identified the ALB-GOLD pasta to Threeline
6 customers as Delicious Wonders on invoices by, first, not
7 producing the invoices that bore that designation during the
8 initial phases of discovery, and then upon order of
9 Magistrate Levy to produce the complete Threeline QuickBook
10 database by deleting every reference to Delicious Wonders in
11 the QuickBook database prior to turning it over to defendants
12 in discovery.

13 THE COURT: How do you know that happened?

14 MR. DRANGEL: Because after we received that, two
15 days later, Threeline decided to give us a different version
16 of it, which did not have the deletion of the Delicious
17 Wonders trademarks to it. We have copies of both of the
18 databases, and during the course of the trial we will see how
19 these items were deleted from the database.

20 Of course, the label to the ALB-GOLD pasta packaging
21 bore the chicken and egg trademark at issue in this lawsuit as
22 well. Lenny and Maya claimed at the preliminary injunction
23 hearing that they had a Brooklyn-based designer create the
24 chicken and egg trademark and label.

25 During the deposition of Maya, though, she admitted

OPENING STATEMENT - DRANGEL

1 that this testimony was false. In fact, it was also
2 determined that evidence produced in support of this claim was
3 proven to be tampered with.

4 What the evidence does show is that Gregory Vernikov
5 communicated with ALB-GOLD to create the label for the
6 ALB-GOLD pasta, including the chicken and egg trademark. And
7 despite arguments by Threeline that Gregory required the
8 permission of Lenny and Maya to use the final design, he
9 simply sought their are permission as customers.

10 The final ALB-GOLD pasta label for the chicken and
11 egg trademark, the Delicious Wonders trademark, identified
12 Interpage by manufactured by Interpage Co., bore Interpage UPC
13 code, and Gregory Vernikov's email address and cell phone
14 number.

15 Finally, once the agreement, product and packaging
16 were all finalized, an order was placed. Threeline placed the
17 first order from Interpage for two containers of ALB-GOLD
18 pasta, which was relayed by Interpage by ALB-GOLD. ALB-GOLD
19 then issued purchase orders addressed to Gregory's Interpage
20 Co. with Gregory's home address.

21 As was custom for some euro purchases, Threeline
22 sent the purchase orders to Trilini International for payment,
23 paid Trilini their 3 percent commission, and the goods were
24 shipped to Threeline's warehouse.

25 Gregory and Interpage were identified on all import

OPENING STATEMENT - DRANGEL

1 shipping documents for the initial two containers of ALB-GOLD
2 pass as co-signee and importer.

3 While Interpage did not receive a direct commission
4 for the shipment, the transaction was handled as part of its
5 agreement with Threeline for free rent, Threeline also
6 obtained a 10 percent discount and Interpage received its
7 usual commission by W2 payment. Likewise, per the terms of
8 the ALB-GOLD agreement, Interpage was entitled to a commission
9 from ALB-GOLD.

10 It is not really clear how an argument can even be
11 made given all this evidence, which Lenny and Maya were
12 parties to, that Threeline is the owner of the chicken and egg
13 trademark and can claim first use.

14 As for the chicken and egg trademark registration
15 itself that Threeline hung its hat on in wrongfully obtaining
16 an injunction in this case causing severe financial damage to
17 my clients, Threeline now acknowledges that the date of first
18 use in the registration is wrong and argues the same date of
19 first use that Interpage now relies upon for its own.

20 However, as Your Honor indicated in the summary
21 judgment order, since Threeline is now attempting to rely on
22 an earlier date of first use than was identified in the
23 registration, the presumptions that are afforded to a
24 trademark owner no longer apply and Threeline must come
25 forward with clear and convincing evidence that it owns the

OPENING STATEMENT - DRANGEL

1 trademark, and that the first use is its own.

2 Under U.S. trademark law, if my clients are correct,
3 and we are confident they are, the first use of the chicken
4 and egg trademark will be the sale of the first two containers
5 of the pasta bearing the chicken and egg trademark by
6 Interpage to Threeline in December of 2012. If Threeline is
7 correct, than its first use will be the sale of first two
8 containers of pasta to its customers in January of 2013.

9 Furthermore, Threeline will need to show that it
10 followed up the first use with substantial exclusive
11 continuous use of the chicken and egg trademark prior to my
12 clients.

13 Your Honor has already acknowledged in the summary
14 judgment order that Interpage's sales of nearly 120,000 units
15 of ALB-GOLD pasta products bearing the chicken and egg was not
16 de minimis. Moreover, Threeline faces a greater burden in
17 this case, because not only do they need to show there was --
18 that their's was the first use, but they must also overcome
19 clear evidence that the relevant public, wholesalers and
20 retailers, are more likely to identify the ALB-GOLD pasta
product bearing the chicken and egg trademark and other
21 Interpage source identifiers, such as their company name,
22 contact details and DW trademark as originating from Interpage
23 and not Threeline.

25 Counsel argues that Gregory Vernikov waited too long

OPENING STATEMENT - DRANGEL

1 to pursue this action. This could be said even more so for
2 Threeline. As counsel indicated, Threeline knew as early as
3 2013 that Gregory was selling, yet waited nearly two years
4 before taking action in this case.

5 It should be noted at this point that a number of
6 the wholesale and retail witnesses identified in our witness
7 list, who have been subpoenaed to testified, have indicated
8 they have been contacted by members of Threeline and are
9 concerned about testifying and, therefore, will not be doing
10 so voluntarily.

11 If there was such a clearcut case as Threeline
12 suggests, then Threeline and its owners would not have
13 tampered with evidence, perjured themselves, and on eve of
14 trial, interfered with trial witnesses.

15 My clients are at a disadvantage here since many of
16 the relevant emails that show communications between it and
17 ALB-GOLD, as stipulated, have been deleted from Threeline's
18 server after Gregory Vernikov left.

19 THE COURT: Can I just ask you. You're saying that
20 the plaintiffs tampered with witnesses? What did they do?

21 MR. DRANGEL: Again, we have subpoenaed a number of
22 witnesses, as you've seen on our witness list, and a number of
23 them have told us that they were contacted by Threeline, and
24 as a result they are not going to appear.

25 THE COURT: Contacted and what was said to them?

PROCEEDINGS

1 MR. DRANGEL: I don't know the specifics and I don't
2 necessarily want to get into the specifics because it's mostly
3 hearsay, but I'm just told.

4 THE COURT: Well, it's an extremely serious
5 allegation, and if it's true, there can be some serious
6 consequences for the plaintiffs. I just want to make sure
7 they're aware of that.

8 All right, go ahead.

9 MR. DRANGEL: Threeline is not new to the litigation
10 game. Our review of ECF records for Southern District and
11 Eastern District show a bevy of cases where Threeline was
12 alleged to have infringed, or it alleged infringement in an
13 aggressive manner.

14 All the evidence to be presented at trial will show
15 that Interpage is the proper owner of the chicken and egg
16 trademark and Threeline is the infringer and liable for any
17 and all damages it caused to Gregory Vernikov and Interpage.

18 Thank you, Your Honor.

19 THE COURT: All right, give me just one second.

20 (Discussion was had off the record.)

21 THE COURT: All right, are you ready to call your
22 first witness?

23 MR. FILOSA: Yes, Your Honor.

24 The plaintiff calls Malvina Kerzhner.

25 THE COURT: Is she going to be testifying with the

PROCEEDINGS

1 assistance of the interpreter?

2 MR. FILOSA: Yes.

3 THE COURT: Does she need the interpreter? It goes
4 much more quickly if she doesn't. I'm fairly confident she's
5 testified without one before. But it's up to you, if she
6 really needs it, she can use, it just takes a much longer
7 time.

8 Go ahead.

9 MR. FILOSA: We assume for the introductory
10 material, Your Honor, no, and then perhaps I think for my
11 questions, I believe she can testify without the assistance of
12 the interpreter only for her answer, which is the format that
13 we followed during the course of the deposition, if she feels
14 she can be more eloquent using her native tongue.

15 THE COURT: That's fine. It might be easier for the
16 court reporter, too. So let's just go ahead and use the
17 interpreter.

18 MR. FILOSA: Thank you.

19 (Witness takes the witness stand.)

20 MALVINA KERZHNER, called as a witness, by the Plaintiffs,
21 having been first duly sworn/affirmed, was examined and
22 testified as follows:

23 THE COURT: All right.

24 THE COURTROOM DEPUTY: State your name for the
25 record.

M. KERZHNER - DIRECT - FILOSA

1 THE WITNESS: Malvina Kerzhner, the full name.

2 THE COURTROOM DEPUTY: Have a seat.

3 THE COURT: All right, since we have the
4 interpreter, let's go ahead and use the interpreter.

5 A couple of things. I want you to answer only the
6 question that you're being asked. Don't volunteer any
7 information, just give the answer to the question that the
8 lawyer is asking you.

9 Wait until the lawyer is finished asking the
10 questions, whichever lawyer is asking the questions, before
11 you start answering, so that the court reporter can get
12 everything down.

13 If there's a question that you don't understand, or
14 you need to have repeated, let us know.

15 All right, go ahead.

16 (Through the interpreter.)

17 DIRECT EXAMINATION

18 BY MR. FILOSA:

19 Q Good morning, Ms. Kerzhner.

20 A Good morning.

21 Q What is your affiliation with the plaintiff, Threeline
22 Imports?

23 A I'm the president of the company, Threeline Imports.

24 Q And for how long have you held that title?

25 A With Threeline Imports, we've been working since

M. KERZHNER - DIRECT - FILOSA

1 June 2006.

2 Q And what is your -- what are your responsibilities with
3 respect to the company?

4 A I usually work in accounting, accounts payable. I also
5 handle logistics, help out the girls with billing. And
6 communicating with clients over the internet because Leonid
7 doesn't use internet.

8 THE COURT: All right, you have to wait until he
9 finished talking because he's providing a translation, and if
10 you're talking at the same time, I can't hear and the court
11 reporter can't hear.

12 Next question.

13 Q Can you explain to the Court what the business of
14 Threeline is?

15 A Threeline Imports handles export of products from
16 European countries and parts of the former Soviet Union and
17 sales of goods in the United States.

18 Q Can you identify for the Court what types of products?
19 Provide examples.

20 A We sell confectionary products, a lot of candy goods,
21 pasta, and grain products. And other -- finished fruit,
22 vegetable, candy products.

23 THE COURT: The stuff that you're selling, is
24 that -- are you selling it to people in the United States, or
25 is that what you're doing?

M. KERZHNER - DIRECT - FILOSA

1 THE WITNESS: Yes.

2 THE COURT: And so this is -- these are items that
3 you're importing from Eastern Europe?

4 THE WITNESS: Yes.

5 THE COURT: Are you also exporting?

6 THE WITNESS: No.

7 THE COURT: Yes or no?

8 THE INTERPRETER: No.

9 Q And can you explain to the Court who the customers of
10 Threeline are?

11 THE WITNESS: Hello?

12 THE INTERPRETER: We have an issue with the...

13 THE COURT: You know what might be easier, you want
14 to just stand up here?

15 THE INTERPRETER: Okay.

16 A Yes, we work in the 40 or 45 states of the United States.

17 We mostly sell to distributors, to smaller-sized
18 distributors that don't usual handle their own imports, or if
19 they handle imports in smaller amounts. And we also sell to
20 large grocery stores.

21 THE COURT: How many people work there at Threeline?

22 THE WITNESS: Currently it's 12 to 14 people.

23 THE COURT: Okay.

24 BY MR. FILOSA:

25 Q Does Threeline maintain a warehouse?

M. KERZHNER - DIRECT - FILOSA

1 A We have a -- we have a warehouse. We have machinery. We
2 have equipment.

3 Q Where is the warehouse located?

4 A 14A 53rd Street, Brooklyn, New York 11235-0032 is the ZIP
5 code.

6 Q Who are the shareholders of Threeline?

7 A I own two thirds of the shares of Threeline, and one
8 third of the shares are owned by Euro Candy Company, which is
9 owned by three people.

10 THE COURT: Who are the three people?

11 THE WITNESS: Roman Katsnelson, Arkady Volovik and
12 Yuri Leschinsky.

13 Q Does Leonid hold any position with Threeline?

14 A He's the manager of the company.

15 Q And what are Leonid's responsibilities as manager of
16 Threeline?

17 A He has many responsibilities. He orders goods. He sells
18 goods. He manages everything that happens in the warehouse
19 down to each employee picking up a box and placing it on a
20 pallet.

21 THE COURT: Does he get a W2?

22 THE WITNESS: Yes, of course.

23 THE COURT: Is he your husband?

24 THE WITNESS: Yes.

25 Q Are you familiar with a company known as Trilini

PROCEEDINGS

1 International Ltd.?

2 A Yes, it's a company, our partners, that we work together
3 with.

4 Q And what is the business of Trilini International Ltd.?

5 A Trilini International supplies confectionary factories in
6 Europe and former Soviet countries with supplies to produce
7 goods -- ingredients, such as cocoa beans and other items that
8 I'm not really familiar with the details their business.

9 THE COURT: Who owns that company?

10 THE WITNESS: Roman.

11 THE COURT: The same guy that owns -- wait a second.
12 Roman Katsnelson, is that the same guy that's a shareholder in
13 your company?

14 THE WITNESS: Yes.

15 THE COURT: All right, what about those other two
16 people, Arkady and Yuri --

17 THE WITNESS: Yes.

18 They are also -- it's their company, the Trilini
19 International.

20 THE COURT: And how do you know those guys? How do
21 you Roman Katsnelson, Arkady, and all those fellows?

22 THE WITNESS: We became acquainted with Yuri
23 Leschinsky in 2003 or 2004.

24 THE COURT: Does Trilini mean Threeline? Does that
25 mean the same thing?

M. KERZHNER - DIRECT - FILOSA

1 THE WITNESS: It's also the same thing, but we have
2 a totally different entity.

3 THE COURT: All right, go ahead.

4 THE WITNESS: It's an affiliated company.

5 BY MR. FILOSA:

6 Q What relationship, if any, exists between Threeline
7 Imports and Trilini International Ltd.?

8 A I mentioned this before, we are affiliated company and
9 there is nothing else.

10 Q Does Trilini International Ltd. maintain separate
11 offices?

12 A Yes, they have a totally separate, beautiful office.

13 THE COURT: Where is the totally separate office?

14 THE WITNESS: 41 Terrace Place in Brooklyn.

15 THE COURT: And are you a shareholder of Trilini?

16 THE WITNESS: No.

17 THE COURT: Go ahead.

18 BY MR. FILOSA:

19 Q Now, are you familiar with the defendant, Gregory
20 Vernikov?

21 A Yes.

22 Q When did you meet Mr. Vernikov?

23 A I cannot say exactly. I think it was in 2004 or 2005.

24 Q How did you meet Mr. Vernikov?

25 A He came to our warehouse.

M. KERZHNER - DIRECT - FILOSA

1 Q And what did you say to him and what did he say to you
2 when he came to the warehouse at this time?

3 A I did not say anything.

4 He could not work at his previous place of
5 employment, so he wanted to work with us. He discussed it
6 with Leonid and he came to work for us.

7 Q What was your understanding of his previous employment
8 prior to this time of joining Threeline?

9 A I had an understanding that he had a very unsuccessful
10 business, that he had a small barn that he was maintaining.

11 THE COURT: A barn in New York City?

12 THE WITNESS: Garage. A garage. It was like a
13 garage.

14 I think he purchased a condominium at the time and
15 he couldn't -- actually made a down payment and he couldn't
16 run his business further, something like that. He had
17 financial difficulties.

18 Q Again, just to focus the time period, the time period
19 you're testifying to is approximately 2005?

20 A Yes.

21 Q So did there come a time that Mr. Vernikov began working
22 out of Threeline's warehouse?

23 A Yes.

24 Q And when was that?

25 A At around the same time, in 2005.

PROCEEDINGS

1 THE COURT: What was he doing?

2 THE WITNESS: He was doing what we were teaching him
3 to do. He was mainly engaged in -- as a buyer.

4 THE COURT: You were teaching him?

5 THE WITNESS: No, not we were not teaching him, we
6 were learning together how to do it, but he was doing what we
7 were telling him to do. What I and Leonid were telling him to
8 do.

9 THE COURT: So you were telling him what to do in
10 2005?

11 THE WITNESS: Yes, we would give him tasks to do.
12 For instance, if we needed to start a new line, our goal was
13 to expand our business.

14 THE COURT: Were you giving him a W2 in 2005?

15 THE WITNESS: No.

16 THE COURT: So he wasn't working for you then; is
17 that correct?

18 THE WITNESS: He worked, he had his own company but
19 he worked for us. You wanted to be paid by 1099.

20 THE COURT: So he had his own company? And he was
21 working for you?

22 THE WITNESS: Yes.

23 THE COURT: And you weren't giving him a W2?

24 THE WITNESS: At that time, no.

25 THE COURT: And how much were you paying him for his

PROCEEDINGS

1 work for you?

2 THE WITNESS: It varied depending on the sales
3 amount.

4 THE COURT: It varied?

5 THE WITNESS: Yes, it varied.

6 THE COURT: Well, give me an estimate. For 2005,
7 how much did you pay him for working for you?

8 THE WITNESS: I do not remember. I don't have the
9 paperwork with me.

10 THE COURT: Next question, please.

11 BY MR. FILOSA:

12 Q What was your understanding of defendant, of the name
13 under which Mr. Vernikov did business prior to working out of
14 the Threeline warehouse?

15 A I -- Interpage, I did not know, I did not even know the
16 name of the company at the time, I just knew him as Gregory
17 Vernikov.

18 THE COURT: When did you learn the name of the
19 company?

20 THE WITNESS: When we were -- had started working
21 together. I did not know what he had.

22 THE COURT: When did you learn it, what year?

23 THE WITNESS: 2006 or 2007.

24 THE COURT: Okay, so for 2005 and 2006, he was
25 working at your company but also running his business out of

PROCEEDINGS

1 your warehouse?

2 THE WITNESS: He did not engage in any business out
3 of our warehouse.

4 THE COURT: All right. And so you didn't -- did you
5 even know that he had another business?

6 THE WITNESS: Yes.

7 THE COURT: And when did you learn that?

8 THE WITNESS: 2005 or 2006.

9 THE COURT: So in 2005 or 2006, you learned that he
10 has this other business, correct?

11 THE WITNESS: It's not a business, it was a name
12 that he had the name in which he engaged in business.

13 THE COURT: That sounds like a business to me.

14 THE WITNESS: He had an account.

15 THE COURT: The question is a simple question: Did
16 you know that he had a business?

17 THE WITNESS: Yes.

18 THE COURT: When did you learn it?

19 THE WITNESS: 2005 or 2006. At around the same time
20 when he started working for us.

21 THE COURT: And where was your understanding -- let
22 me rephrase it.

23 Where did he run this business?

24 THE WITNESS: I guess from our office, if it was a
25 business.

M. KERZHNER - DIRECT - FILOSA

1 THE COURT: I thought you said that you didn't think
2 he ran it out of your business.

3 THE WITNESS: I know that the entire business was --
4 I know that the entire business was paid from the interest of
5 Threeline Imports.

6 What kind of a business it is if he could not decide
7 anything without our approval.

8 THE COURT: Well, that's not really what I asked
9 you.

10 You said that you didn't know that he had a
11 business. Now, you say you do know that he had a business,
12 correct?

13 THE WITNESS: No, I said that I know that he had
14 that name of the business.

15 THE COURT: Next question.

16 BY MR. FILOSA:

17 Q Ms. Kerzhner, did there come a time that Mr. Vernikov
18 became an employee of Threeline?

19 A Yes.

20 Q When was that?

21 A In 2009.

22 Q And what were the circumstances under which Mr. Vernikov
23 became an employee of Threeline?

24 A I think it was in late 2008, early 2009. He was going
25 through a divorce with his wife. Actually, the Interpage

PROCEEDINGS

1 business was his wife's business. She withdraw all the money
2 from his business account and ended up in a difficult
3 financial position without money again. And the name
4 Interpage did not exist anywhere on paperworks.

5 THE COURT: I'm so confused, I'm sorry.

6 You said that he had something with just the name in
7 2005 and 2006.

8 So what happens between 2005 and 2009? You said his
9 wife took all the money from his business account? From
10 Interpage?

11 THE WITNESS: Yes.

12 THE COURT: So he must have -- at that time then, he
13 must have realized that he was doing the business because
14 there's money in a business account, correct?

15 THE WITNESS: There was a little bit of money and we
16 were aware of the on goings.

17 THE COURT: Go ahead.

18 MR. FILOSA: To clarify, Your Honor, at this point
19 the plaintiffs have already stipulated that in the beginning
20 of 2005, defendants -- excuse me, Threeline was aware that
21 Mr. Vernikov was doing business under some form, under an
22 assumed name, Interpage. That's been stipulated to.

23 THE COURT: Sounds a little bit different than what
24 she just testified to, but go ahead.

M. KERZHNER - DIRECT - FILOSA

1 BY MR. FILOSA:

2 Q When Mr. Vernikov became an employee of Threeline, how
3 was Mr. Vernikov compensated?

4 A W2.

5 THE COURT: Did you give him a check every two
6 weeks?

7 THE WITNESS: Yes.

8 THE COURT: How much did you pay him?

9 THE WITNESS: I think a thousand dollars a week.

10 THE COURT: All right. Go ahead.

11 BY MR. FILOSA:

12 Q Ms. Kerzhner, can you take a look at Exhibit 3 in
13 plaintiff's exhibit book, please.

14 THE INTERPRETER: Counsel, can you repeat?

15 MR. FILOSA: Number 3.

16 Q Do you recognize these documents, Ms. Kerzhner?

17 A Yes.

18 Q And what do you understand them to be?

19 A Yes, it's a W2 form for 2009.

20 MR. FILOSA: Your Honor, we would like to offer
21 these documents into evidence, Your Honor, as Plaintiff's
22 Exhibit 3.

23 THE COURT: Any objection?

24 MR. DRANGEL: No, Your Honor, but I think -- should
25 we just stipulate now that --

M. KERZHNER - DIRECT - FILOSA

1 THE COURT: That's what I thought. Aren't you
2 stipulating to all these exhibits?

3 MR. FILOSA: The understanding I have with counsel
4 is to the extent that an exhibit is objectionable be raised,
5 so our silence would be assumed that it's submitted into
6 evidence.

7 THE COURT: If you're upset about something, you'll
8 let me know then, but unless I hear otherwise, it's all in,
9 all right?

10 MR. FILOSA: Yes, Your Honor.

11 Q Again, Ms. Kerzhner, just thumbing through the assorted
12 pages of Plaintiff's Exhibit 3, we can agree that the first
13 page is Mr. Vernikov's 2009 W2 form?

14 A Yes.

15 Q The second page is Mr. Vernikov's 2010 W2 form?

16 A Yes.

17 THE COURT: You know, I can read it, it's all in
18 evidence, so I can see that he's got W2s here until 2013.
19 Okay?

20 Yes, I can see those, so no need to go through each
21 one.

22 Q Can you just clarify for the Court during what time
23 period was Mr. Vernikov a W2 employee of Threeline?

24 THE COURT: I'm going to go out on a limb here and
25 guess that it's between 2009 and 2013.

M. KERZHNER - DIRECT - FILOSA

1 MR. FILOSA: The two partial years.

2 THE COURT: Okay.

3 Q For what period, beginning in 2009, did Mr. Vernikov
4 become a salaried employee of Threeline?

5 A From August 2009 until April 2013.

6 Q And what were Mr. Vernikov's responsibilities as an
7 employee of Threeline?

8 A He engaged in import. Helped Threeline company expand
9 our import lines. He engaged in some of the logistics with
10 the containers and I also helped with that. He also handled
11 labels, if it was necessary. He was helped out by some
12 designer companies. We also hired some consulting services.
13 That was his job.

14 THE COURT: Can I see the lawyers at the sidebar for
15 just a minute?

16 (Continued on the next page.)

17 (Sidebar conference.)

18

19

20

21

22

23

24

25

SIDEBAR CONFERENCE

1 THE COURT: Who is this person sitting with you at
2 the table?

3 MR. FILOSA: At our counsel table?

4 THE COURT: Yes.

5 MR. FILOSA: Alex Kerzhner is there, who is an
6 attorney, the son of Malvina and Leonid Kerzhner, their
7 outside general counsel. He's a member of the bar of the
8 EDNY.

9 THE COURT: If he wants to stay a member of the bar
10 at the EDNY, he should stop signaling to her and doing
11 whatever he's doing from the table.

12 It's extremely distracting, and I can see. So I
13 don't know if he is signaling, maybe he's just nervous she's
14 not going to say something, but you might want to tell him.

15 MR. FILOSA: I will notify him.

16 THE COURT: Maybe because it's his mother and all of
17 that, you know, but he's very intently focused on her and has
18 made a few motions, maybe they're not signals, I don't know,
19 but let's stop it. Okay?

20 MR. FILOSA: Certainly.

21 THE COURT: Thank you.

22 (End of sidebar conference.)

23 (Continued on the next page.)

M. KERZHNER - DIRECT - FILOSA

1 (In open court.)

2 BY MR. FILOSA:

3 Q What was Mr. Vernikov's position or title with Threeline
4 when he became an employee?

5 A Exporter, buyer.

6 Q Did Mr. Vernikov's responsibilities include negotiating
7 purchase terms for products purchased by Threeline?

8 A Yes, of course, he would be on the phone and on the
9 internet, and if there was an issue he would go is to Leonid
10 and resolve the issue.

11 Q Did Mr. Vernikov have final authority to approve the
12 terms of a purchase order for product purchased by Threeline?

13 A No.

14 Q Did Mr. Vernikov's responsibilities include helping
15 locate product which Threeline would purchase?

16 A Yes, of course.

17 Q Did Mr. Vernikov have final authority to approve any
18 particular product which Threeline purchased?

19 A No, he could propose, but he could not decide anything.

20 Q Who had final authority with respect to approving
21 products purchased by Threeline?

22 A Leonid had.

23 Q Can you turn to Exhibit Number 44 in plaintiff's book.

24 MR. ROSENBERG: Your Honor, may I just approach the
25 witness with the book.

M. KERZHNER - DIRECT - FILOSA

1 THE COURT: Sure.

2 Q Do you recognize Plaintiff's Exhibit 44, Malvina?

3 A Yes.

4 Q What do you understand it to be?

5 THE COURT: It's a business card, right?

6 THE WITNESS: (In English.) It's a business card.

7 THE COURT: Okay, and this has Trilini Imports and
8 it has the same address as your -- as Threeline, correct?

9 THE WITNESS: Yes.

10 THE COURT: Just that was just the question.

11 THE WITNESS: Because until 2006 we were Trilini
12 Imports.

13 THE COURT: Go ahead.

14 BY MR. FILOSA:

15 Q During this time, where did Mr. Vernikov report for work,
16 Ms. Kerzhner?

17 THE INTERPRETER: I'm sorry, counsel.

18 Q During the time that Mr. Vernikov was an employee of
19 Threeline, where did Mr. Vernikov report for work?

20 A To our address, 14A 53rd Street.

21 Q And what were Mr. Vernikov's hours of employment?

22 A From 8 to 5.

23 Q And who supervised Mr. Vernikov's work?

24 A Leonid and I did.

25 Q And to whom did Mr. Vernikov report?

M. KERZHNER - DIRECT - FILOSA

1 A Mostly if it was financial matters, he would contact me.
2 If it was general questions regarding purchasing and sales, he
3 would contact Leonid.

4 Q Ms. Kerzhner, did there come a time that Threeline began
5 purchasing a pasta product manufactured by a company known as
6 Franz Tress?

7 A Yes.

8 Q When was that?

9 A If I remember correctly, 2009.

10 Q And how did Threeline learn of Franz Tress?

11 A Leonid went into exhibitions, he took Gregory with him to
12 find --

13 THE COURT: So the question is: How did you learn
14 of this pasta?

15 THE WITNESS: They were on an exhibition at a stand
16 where other participants put their products in Germany.

17 THE COURT: Okay, go ahead.

18 BY MR. FILOSA:

19 Q Who attended the exhibition?

20 A Leonid and Gregory did.

21 Q Where was the exhibition located?

22 A In Germany, Cologne.

23 Q Who paid for Leonid and Gregory's travel expenses?

24 A We always paid for it. We always paid for it. It was
25 our travel expenses of Threeline Imports.

M. KERZHNER - DIRECT - FILOSA

1 Q And who paid for Leonid and Gregory's lodging expenses at
2 the exhibition?

3 A We did, Threeline Imports.

4 Q Ms. Kerzhner, can you turn to Plaintiff's Exhibit 18.

5 Are you familiar with Plaintiff's Exhibit 18,
6 Ms. Kerzhner?

7 A Yes, I have already seen this. It's a Franz Tress
8 contract.

9 Q Did Franz Tress request a contract?

10 A Yes.

11 Q Do you know who prepared Plaintiff's Exhibit 18?

12 A Gregory did.

13 Q Who instructed Gregory to prepare Plaintiff's Exhibit 18?

14 A I instructed him to prepare this document. And I told
15 him that if he needed assistance, I gave him permission to
16 contact my son.

17 Q And who is your son, Ms. Kerzhner?

18 A Alex Kerzhner, who was a law student at the time.

19 I told my son that if Gregory contacted him, he
20 could provide assistance. Saying that we needed this
21 contract, and by "we," I mean Threeline Imports.

22 THE COURT: Where does -- how come it doesn't say
23 Threeline Import on the contract? It says "Interpage".

24 THE WITNESS: Gregory always wanted for this name of
25 the Interpage Co. Inc. to appear on documents, and we both

M. KERZHNER - DIRECT - FILOSA

1 were owners of this Interpage Co. Inc.

2 THE COURT: You owned that company, too?

3 THE WITNESS: No, no.

4 THE INTERPRETER: I'm sorry.

5 THE WITNESS: Interpage Co. Inc. belonged to Trilini
6 International and Threeline Imports.

7 THE COURT: I'm sorry, Interpage belonged to what?

8 THE WITNESS: Interpage Co. Inc. was organized by
9 Roman Katsnelson in early 2009, and at the time Gregory did
10 not have the company.

11 THE COURT: But this doesn't say Interpage Co. Inc.,
12 it says "Interpage Co."

13 That's a different company, correct?

14 MR. FILOSA: Again, referring to Plaintiff's
15 Exhibit 18, Your Honor, it identifies the distributor as
16 Interpage Co. Inc.

17 THE COURT: I see.

18 BY MR. FILOSA:

19 Q Ms. Kerzhner, you see that the agreement identifies
20 Interpage Co. Inc. as distributor? Do you see that?

21 A Yes.

22 Q Now are you familiar with a company known as Interpage
23 Co. Inc.?

24 A Yes.

25 Q Okay. And what do you understand that company to be?

PROCEEDINGS

1 A It's our company, Interpage Co. Inc., which was organized
2 by Roman Katsnelson.

3 THE COURT: When?

4 THE WITNESS: In early 2009.

5 THE COURT: Early 2009?

6 THE WITNESS: Yes.

7 THE COURT: Did you help set that company up?

8 THE WITNESS: No.

9 THE COURT: Do you know why it has the almost
10 identical name to Interpage Co.? Why does it have the same
11 name?

12 THE WITNESS: Yes, I do.

13 THE COURT: Why?

14 THE WITNESS: Because in early 2009, Gregory did not
15 have a company and Trilini that too many lines.

16 THE COURT: So it had too many lines so -- I just
17 don't -- this is what I don't understand.

18 Why did you name the company the exact same name as
19 the defendant?

20 THE WITNESS: It is because our products and cans
21 had the name "Interpage" on them and they were already in
22 line.

23 THE COURT: But wasn't that his company?

24 THE WITNESS: No.

25 THE COURT: Whose was it?

M. KERZHNER - DIRECT - FILOSA

1 THE WITNESS: Roman Katsnelson.

2 THE COURT: And when did he come up with the name
3 "Interpage"?

4 THE WITNESS: In 2009.

5 THE COURT: So is it your testimony that there was
6 no Interpage before 2009 by anyone?

7 THE WITNESS: Prior to 2009, he had the company, but
8 by 2008 he lost the company and the account, bank account, and
9 Threeline was operating under two names; both Threeline and
10 Interpage.

11 THE COURT: All right. Go ahead.

12 There is no question.

13 BY MR. FILOSA:

14 Q And who do you understand the shareholders of Interpage
15 Co. Inc. to be?

16 A Roman Katsnelson and us, and I, Threeline Imports.

17 Q Did you have any discussion with Mr. Katsnelson or
18 Mr. Vernikov regarding the formation of Interpage Co. Inc.?

19 A Yes.

20 Q And what was said during that discussion?

21 A We discussed that Gregory did not have a company and
22 there was no way to protect our lines, and we needed to create
23 a company name that would have the "Interpage" name on it.

24 Q And Mr. Vernikov was present for this discussion?

25 A No, we told him about it. But he was present when our

M. KERZHNER - DIRECT - FILOSA

1 partners brought us the corporate book. And we proposed to
2 him that since he did not have a company of his own, to be a
3 shareholder of our company that we opened up.

4 Q And what did Mr. Vernikov say in response?

5 A I don't need it, I'm good as it is, I'll work for you
6 guys until I get to retirement.

7 Q Did Mr. Vernikov object to the use of the name Interpage
8 Co. Inc. to you at that time?

9 A No. On the contrary. At the time he was happy that the
10 company was opening.

11 Q And, again, what was the purpose of the formation of the
12 company, Interpage Co. Inc.?

13 A Just to continue operating and to use what we have built
14 up to the outside.

15 Q Can you turn to Plaintiff's Exhibit 36, please.

16 Do you recognize Plaintiff's Exhibit 36,
17 Ms. Kerzhner?

18 A I understand what it is.

19 Q Can you explain what your understanding is?

20 A That Interpage International Inc. was opened in
21 April 2011.

22 Q So in 2009, when Interpage Co. Inc. was formed, do you
23 know whether Mr. Vernikov had any New York registered
24 corporation under the name Interpage Co. or any other
25 variation of Interpage in 2009?

M. KERZHNER - DIRECT - FILOSA

1 A No.

2 THE COURT: The question -- I think repeat the
3 question. Just answer the question that the lawyer's asking
4 you. It makes it much easier.

5 Next question. The answer is "no," right?

6 THE INTERPRETER: She didn't know.

7 THE COURT: All right, next question.

8 MR. ROSENBERG: One second, Your Honor.

9 THE COURT: Sure.

10 (Pause.)

11 BY MR. FILOSA:

12 Q And, again, just to clarify, did Mr. Vernikov have a
13 registered corporation known as Interpage in 2009?

14 A In 2009, he did not have any company under the Interpage
15 name.

16 Q Did Threeline purchase pasta from Franz Tress following
17 the execution of the Franz Tress agreement?

18 A Yes.

19 Q Who paid for the pasta?

20 A Threeline paid for it.

21 Q Who did Threeline pay?

22 A We were invoiced in euros, and when we get invoiced in
23 euros, we -- our partners, Trilini International, makes the
24 payments.

25 Q And by whom was Threeline invoiced?

M. KERZHNER - DIRECT - FILOSA

1 A Franz Tress. Company Franz Tress.

2 Q Did Mr. Vernikov issue any invoice to Threeline for the
3 Franz Tress pasta?

4 A No.

5 Q Did any business under which Mr. Vernikov -- any business
6 under which Mr. Vernikov did any business, issue Threeline any
7 invoice for the Franz Tress pasta?

8 A We never received invoices from Mr. Vernikov. We only
9 received -- we always received invoices from manufacturers.

10 Q And where was the pasta delivered?

11 A To our warehouse.

12 Q Did Threeline pay Mr. Vernikov any fee or any commission
13 in connection with Threeline's purchase of Franz Tress pasta?

14 A Aside from the salary, we never paid commission for
15 merchandise or goods.

16 Q Did Threeline pay Mr. Vernikov any fee or commission or
17 any other compensation in connection with the negotiation and
18 execution of the Franz Tress contract?

19 A This was part of his duties and he received his salary
20 for those duties.

21 Q So the answer's "no"?

22 A No.

23 THE COURT: So when the lawyer asks you a question,
24 if the answer is no just say "no," you don't have to go into
25 this explanation.

M. KERZHNER - DIRECT - FILOSA

1 Next question.

2 Q Did Threeline buy any Franz Tress pasta from the
3 defendants?

4 A No.

5 Q When Threeline purchased the Franz Tress pasta from Franz
6 Tress, who paid all the shipping charges for that purchase?

7 A We did, Threeline.

8 Q Who paid all the freight charges?

9 A Threeline company.

10 Q Who paid the Customs brokers fees?

11 A Threeline company.

12 Q What did Threeline do with the pasta that it purchased
13 from Franz Tress?

14 A Sold it to clients.

15 Q Did Franz Tress pay Mr. Vernikov or any of the defendants
16 any commission in connection with Threeline's purchase of the
17 Franz Tress pasta?

18 A No.

19 Q Did Franz Tress pay the defendants any commission or any
20 compensation in connection with the execution of the Franz
21 Tress agreement?

22 A No.

23 Q Did defendants sell Franz Tress pasta?

24 A No.

25 Q Ms. Kerzhner, are you familiar with a company known as

M. KERZHNER - DIRECT - FILOSA

1 ALB-GOLD?

2 A Yes.

3 Q How did Threeline learn of ALB-GOLD?

4 A Also through an exhibition.

5 Q And when was this exhibition?

6 A I think 2011.

7 Q Who attended the exhibition?

8 A All the exhibitions were attended by Leonid and he would
9 take Mr. Vernikov with him. I never attended exhibitions.

10 Q Okay, and this particular exhibition, do you recall where
11 it was held?

12 A I think in Germany.

13 Q We're referring to the Anuga trade show?

14 A Anuga trade show.

15 Q And who paid for Leonid and Mr. Vernikov's attendance at
16 this Anuga trade show?

17 A Threeline Imports.

18 Q And who paid for the hotel for Mr. Vernikov and Leonid?

19 A Threeline Imports.

20 Q And so Threeline learns of ALB-GOLD pasta products at the
21 Anuga trade show.

22 What, if anything, did Leonid say to you regarding
23 ALB-GOLD pasta following his return from the Anuga trade show?

24 THE COURT: What did Leonid say?

25 MR. FILOSA: Yes.

M. KERZHNER - DIRECT - FILOSA

1 A He did not say anything to me, he gave instruction to
2 Mr. Vernikov to continue communication to purchase the pasta.
3 He did not give me instructions.

4 Q Did you have a conversation with Mr. Vernikov regarding
5 ALB-GOLD following their return from the Anuga trade show?

6 THE COURT: The question is: Did you have any
7 conversation with him?

8 I'm sorry, you can translate what she said, but that
9 sounded like a very long answer for what should be a "yes" or
10 a "no". Let's put the question again.

11 Did you have any conversation with the defendant
12 about this when they got back from this exhibition?

13 THE WITNESS: When they returned, I did not have a
14 conversation, but later I did.

15 THE COURT: All right. Next question.

16 BY MR. FILOSA:

17 Q Did Threeline instruct Mr. Vernikov to request a product
18 list from ALB-GOLD?

19 A Yes.

20 Q Can you turn to Plaintiff's Exhibit 4.

21 And, Ms. Kerzhner, do you recognize Plaintiff's
22 Exhibit 4?

23 A Yes.

24 Q Who do you understand Claus Doerner to be?

25 A He's a manager at ALB-GOLD.

M. KERZHNER - DIRECT - FILOSA

1 Q Turning to the page Bates-numbered in the lower
2 right-hand corner Threeline 1051 on Exhibit 4. Looking at the
3 email in the middle of the page, do you see Gregory?

4 A Yes.

5 Q And the email address is Gregory@Trilini.com.

6 Do you see that?

7 A Yes.

8 Q Can you explain to the Court what email server that is?

9 A We use Trilini International's server.

10 Q And who's the "we" in that response?

11 A Threeline Imports uses the servers of Trilini
12 International.

13 Q Again, I'm looking at the email in the middle of the
14 page, it appears that Gregory writes to Mr. Doerner:

15 "Hi, Claus. Yes, the product looks good. Please
16 send us samples of bandnudeln" -- and I'll spare everyone the
17 pronunciation of rest.

18 THE COURT: It is in evidence, so.

19 Q Who determines receipt of the product. There's a list of
20 products and the amounts, who determined these amounts?

21 A Only Leonid.

22 Q Now, turning to the first page of Plaintiff's Exhibit 4,
23 you see that it reads it's from. Who is Viktor F. Flaig?

24 A He's a Russian-speaking employee of ALB-GOLD.

25 Q And we'll read along.

M. KERZHNER - DIRECT - FILOSA

1 Dear, Gregory, please find attached a list with
2 available egg pastas. You can get a picture to each shape
3 when you click to, quote, please click here, in the Excel
4 file.

5 THE COURT: You know, if you want to just point her
6 to something in particular, because it is in evidence, you
7 don't have to read it.

8 Q Turning to the last page of Plaintiff's Exhibit 4.

9 A Okay.

10 Q Do you recognize this Excel spreadsheet?

11 A Yes, that's what ALB-GOLD sent us.

12 Q Okay. Did you discuss this spreadsheet with Leonid?

13 A Gregory discussed it with Leonid.

14 Q Do you have an understanding what they discussed?

15 A Quantity of the first container.

16 Q Turn to Plaintiff's Exhibit 5, please, Ms. Kerzhner.

17 And, again, you'll see this.

18 Do you recognize this email?

19 A Yes.

20 Q And your email to Gregory dated July 30, 2012 at
21 Gregory@Trilini.com, subject pasta order: Grecia, send the
22 order this way.

23 Do you see that?

24 A Yes.

25 Q And again, "Grecia" referring to Mr. Vernikov?

M. KERZHNER - DIRECT - FILOSA

1 A Yes.

2 Q And let's take a look at the second page of the exhibit.
3 You see that there are numbers in the right-hand margin of the
4 Excel?

5 A Yes.

6 Q Who determined the numbers in the right-hand margin of
7 Plaintiff's Exhibit 5?

8 A Leonid did.

9 Q Who determined which varieties of pasta to order?

10 A Leonid did.

11 Q From whom did Threeline order the ALB-GOLD pasta
12 reflected in this exhibit?

13 A From ALB-GOLD.

14 Q Now, during this time period, did Threeline have any
15 discussion with the defendants whether Threeline would
16 purchase ALB-GOLD pasta from the defendants?

17 A No.

18 Q Okay. During this time, did Threeline have any
19 discussion with the defendants as to whom would be paid for
20 the ALB-GOLD pasta products?

21 A No.

22 Q Did Threeline ever agree to pay defendants any price, any
23 commission, or any other compensation in connection with
24 Threeline's purchase of ALB-GOLD pasta?

25 A It was never discussed.

M. KERZHNER - DIRECT - FILOSA

1 THE COURT: All right, this might be a good time for
2 a break.

3 Do you know how much more you have?

4 MR. FILOSA: I'd say an hour.

5 THE COURT: Let's get to the chicken and the egg;
6 shall we?

7 MR. FILOSA: Next.

8 THE COURT: All right, we'll be in recess for about
9 five minutes.

10 MR. FILOSA: Okay.

11 (Whereupon, a recess was taken at 11:48 a.m.)

12 THE COURTROOM DEPUTY: All rise.

13 THE COURT: All right, everybody, have a seat.

14 (Continued on next page.)

15

16

17

18

19

20

21

22

23

24

25

Kerzhner - Direct/Filosa

1 (In open court.)

2 (Through the interpreter.)

3 THE CLERK: The witness is reminded that she is
4 still under oath.

5 THE WITNESS: Yes.

6 THE COURT: Go ahead.

7 DIRECT EXAMINATION

8 BY MR. FILOSA (continuing):

9 Q So, Ms. Kerzhner, did there come a time that Threeline
10 began discussing with Mr. Vernikov the label that was going to
11 be placed on the ALB-GOLD pasta product?

12 A Yes.

13 Q When was that?

14 A From early July 2012.

15 Q What was said?

16 A We wanted to put -- we wanted to put our own label on
17 that pasta for Threeline Imports.

18 Q What was the label displayed on the Franz Tress pasta?

19 A Franz Tress had its own label, and we purchased it from
20 them with their label of grandmother.

21 Q So the Franz Tress pasta bore a Franz Tress label?

22 A Yes.

23 Q Can you explain to the court why Threeline became
24 interested in purchasing ALB-GOLD pasta in addition to Franz
25 Tress?

Kerzhner - Direct/Filosa

1 A Because it was of good quality. It was a kosher product,
2 and they were giving us a slightly better price than Franz
3 Tress.

4 THE COURT: Did they have their own label on their
5 pasta?

6 THE WITNESS: They had several distributors in
7 America, and they wanted to distinguish it so that each
8 company would have its own label.

9 THE COURT: Even though it's all from the same
10 place?

11 THE WITNESS: Yes.

12 THE COURT: All right. Next question.

13 BY MR. FILOSA:

14 Q Ms. Kerzhner, the "they" that you are referring to, what
15 pasta manufacturer are you referring to --

16 THE COURT: You have to wait until he finishes the
17 question.

18 Q What pasta manufacturer were you referring to in response
19 to the court's question?

20 A ALB-GOLD product.

21 Q So did ALB-GOLD offer Threeline the opportunity to sell
22 the ALB-GOLD pasta product under a private label?

23 A Yes.

24 Q Why was that, to your understanding?

25 A To distinguish it. They had several distributors, and

Kerzhner - Direct/Filosa

1 they wanted each distributor to have its own label.

2 Q So you have -- so you testified you had -- Threeline had
3 a conversation with Mr. Vernikov regarding creation of a label
4 to be displayed on the ALB-GOLD pasta product.

5 What's said?

6 A We wanted to have a beautiful label, and we preferred to
7 have a chicken on it.

8 Q Can you turn to Plaintiff's Exhibit 6, please.

9 Do you recognize Plaintiff's Exhibit 6,
10 Ms. Kerzhner?

11 A Yes.

12 Q Okay. Can you turn to the second page of Exhibit 6.

13 Is this a photograph of a label which Mr. Vernikov
14 submitted to Threeline for its approval?

15 A That was one of the first ones.

16 THE COURT: I'm sorry. I just have a question. If
17 ALB-GOLD sends pasta, is it the case that it will have
18 different names on it?

19 THE WITNESS: Yes.

20 THE COURT: So it could be -- one could be -- what
21 was the name of the one that you were distributing?

22 MR. FILOSA: Is Your Honor referring to the noodle
23 type?

24 THE COURT: No, no, no. I want to know the name of
25 it. What's the brand?

Kerzhner - Direct/Filosa

1 THE WITNESS: We sold it as Brown Chicken.

2 THE COURT: But the very same pasta from the very
3 same place could be sold under a different name by somebody
4 else, right?

5 THE WITNESS: Yes.

6 THE COURT: And could they be different prices?

7 THE WITNESS: Yes, of course.

8 THE COURT: Of course? But it's the same pasta,
9 right?

10 THE WITNESS: They wanted to keep up a certain
11 level, and when they found out that Gregory was selling the
12 pasta they found out he was selling it at a much lower price,
13 and they did not want that to happen.

14 THE COURT: I don't know what that means. So did
15 you sell more than one -- did you sell ALB pasta under more
16 than one name?

17 THE WITNESS: No. We sold it under one name.

18 THE COURT: Okay. And that was egg?

19 THE WITNESS: It was called Brown Chicken.

20 THE COURT: Go ahead.

21 BY MR. FILOSA:

22 Q Again, to clarify the court's question, under what
23 company name did you sell what you were referring to as the
24 Brown Chicken pasta?

25 A Threeline Imports.

Kerzhner - Direct/Filosa

1 Q When you are referring to what you just called -- well,
2 what you just called to the court Brown Chicken, what are you
3 referring to?

4 A The chicken that is depicted on our image.

5 Q Turning again to the second page of Plaintiff's
6 Exhibit 6, do you recognize this photograph?

7 A Yes.

8 Q Okay. Is this a label that Gregory Vernikov submitted to
9 Threeline for its approval?

10 A Yes.

11 Q Did Threeline approve this label?

12 A No.

13 Q Do you recognize, Ms. Kerzhner, let's look at the image
14 on the top of the pasta bag, the farm and -- it looks like it
15 depicts a farm and a field. A farmhouse and a field. Excuse
16 me.

17 A Yes.

18 Q Do you recognize that image?

19 A Yes.

20 Q Had you previously seen that image, prior to seeing this
21 photograph?

22 A Yes.

23 Q Okay. When did you -- what did you recognize that image
24 to be?

25 A That part belongs to another brand of ours that was

Kerzhner - Direct/Filosa

1 previously registered, called Granny's Farm. That's
2 associated with the line that handles vegetable and fruit
3 canned products.

4 THE COURT: Is that also from ALB?

5 THE WITNESS: From Bulgaria.

6 THE COURT: Okay. Go ahead.

7 BY MR. FILOSA:

8 Q Can you turn to Plaintiff's Exhibit 19.

9 Is this the Granny's Farm trademark that you were
10 referring to in your testimony moments ago?

11 A Yes.

12 Q Is this the farmhouse and field image that you were
13 referring to in your testimony moments ago?

14 A Yes.

15 Q Turn to Plaintiff's Exhibit 20, please.

16 THE COURT: How much are we going to be talking
17 about Granny's Farm? I thought the question was Chicken and
18 Eggs here?

19 MR. FILOSA: No.

20 THE COURT: So let's not talk about Granny's Farms,
21 all right, unless it's important.

22 MR. FILOSA: We are just tying it into the image
23 submitted, Your Honor.

24 THE COURT: All right. I can compare them.

25

Kerzhner - Direct/Filosa

1 BY MR. FILOSA:

2 Q Again, just briefly, Ms. Kerzhner, Plaintiff's
3 Exhibit 20, is this label, is this a product that Threeline
4 sold under the Granny's Farm trademark?

5 A Yes, it belongs to Threeline.

6 Q Same question for 21.

7 A Yes.

8 Q And same question for 22.

9 A Yes.

10 Q So, again, turning back to the second page of Plaintiff's
11 Exhibit 6, Mr. Vernikov submitted a proposed label to
12 Threeline for the ALB-GOLD pasta for Threeline's approval
13 using an image of a trademark previously registered by
14 Threeline; is that correct?

15 A Yes.

16 Q Following the submission of the label, the sample label
17 that's shown on Plaintiff's Exhibit 6, did Mr. Vernikov submit
18 additional proposed labels to Threeline for its approval?

19 A He provided -- he showed several labels.

20 Q It you turn to Plaintiff's Exhibit 8.

21 Looking at the first page, is this a label which
22 Mr. Vernikov submitted to Threeline for its approval?

23 A Yes.

24 Q Did Threeline approve this label?

25 A No.

Kerzhner - Direct/Filosa

1 Q Next page, second page of Plaintiff's Exhibit 8, same
2 questions: Is this a label that Mr. Vernikov submitted to
3 Threeline for its approval?

4 A Yes.

5 Q Did Threeline approve of this label?

6 A No.

7 Q Third page, is this a label that Mr. Vernikov submitted
8 for Threeline's approval?

9 A He did, and we did not like it.

10 Q Now, at any time did Threeline give Mr. Vernikov any
11 direction as to what they wanted to see on the label?

12 A Yes. Prior to that we sold it with an image of a white
13 chicken; and we just told him to make it simple, to change the
14 color of the chicken to a darker one, a dark chicken.

15 Q What's the significance of a chicken? Why a chicken?

16 A It's a German pasta, and it's associated with the
17 quantity of eggs in the consistency of pasta and quality.

18 Q Following along, in the next image on Plaintiff's
19 Exhibit 8, is this an image of a label that Mr. Vernikov
20 submitted to Threeline for its approval?

21 A Yes.

22 Q Did Threeline approve of this label?

23 A No.

24 Q The next page of Plaintiff's Exhibit 8, is this an image
25 that Mr. Vernikov submitted for approval?

Kerzhner - Direct/Filosa

1 THE COURT: I'm going to assume that all of these
2 are images that were submitted and that they didn't like them.
3 Am I right about that?

4 THE WITNESS: Yes.

5 MR. FILOSA: Fair enough.

6 THE COURT: Let's go on to the next one, then.

7 BY MR. FILOSA:

8 Q Can you turn to Plaintiff's Exhibit 7. Do you see the
9 e-mail on the bottom of Plaintiff's Exhibit 7?

10 Can you translate into English what the Russian text
11 is on the e-mail from Gregory to Leonid on which you were
12 copied, Ms. Kerzhner?

13 A (In English) Translate to English?

14 THE COURT: Why don't you read it. The translator
15 can read it.

16 THE INTERPRETER: Leonid, look at this final version
17 of labels. If something -- if there is something that you
18 don't like, let me know.

19 Q Following the e-mail chain up, then, we see, Malvina,
20 that you forwarded this e-mail to info@Pravdamedia.

21 A Yes.

22 Q Who is Pravda Media?

23 A It's a company that helped us with the label during
24 registration, with the design.

25 Q It's fair to say that Threeline did not like this label,

Kerzhner - Direct/Filosa

1 also?

2 A Yes.

3 Q Did Threeline communicate with Pravda Media regarding the
4 creation of the Chicken and Egg label?

5 A Well, yes, he also wrote me. We knew.

6 Q Take a look at Plaintiff's Exhibit 52, please. Is this a
7 copy of your communication with tomorrow me at Pravda Media
8 regarding the proposed Chicken and Egg label?

9 A Yes.

10 Q We see that they ultimately recommend that, quote, I
11 think the best solution is to purchase a design illustration.

12 Ultimately did Threeline retain Pravda Media to
13 create the Chicken and Egg label?

14 A He showed some things to us. We didn't like it, and then
15 he sent this electronic link.

16 Q Okay. So following -- getting back to Plaintiff's
17 Exhibit 7, following Mr. Vernikov's submission of this label
18 to Threeline for Threeline's approval what, if anything, did
19 Threeline do next with respect to the design of the label to
20 be displayed on the ALB-GOLD pasta?

21 A It was October, and this e-mail is dated October 4. So
22 from July to October nothing -- turned out that nothing was
23 done.

24 Q Did Leonid ever express any dissatisfaction or
25 frustration to you about how long it was taking Mr. Vernikov

Kerzhner - Direct/Filosa

1 to propose a label which met Threeline's approval?

2 THE COURT: That sounds like hearsay to me.

3 MR. FILOSA: To the extent that she was a party to a
4 discussion with Leonid? Did Leonid ever express any
5 dissatisfaction to her?

6 THE COURT: That sounds like hearsay and I think
7 that's what it is, unless there is some exception to the
8 hearsay rule. I'm assuming there isn't.

9 Something that's not hearsay. It's an out-of-court
10 statement offered for the truth, right. Last time I checked
11 unless they changed it?

12 Q So what happened next with respect to the creation of the
13 Chicken and Egg label?

14 A It turned out that the order was ready. The label was
15 not ready.

16 When Gregory came up to us with another label that
17 we did not like, which was in October, Leonid became
18 frustrated. He said how long -- how much longer can you -- do
19 you have to go for. He said find any image of a chicken that
20 looks nice and we will use that. I opened up the computer,
21 started scrolling through and saw a chicken that I liked, and
22 showed it to him and he also liked it.

23 He told Gregory it cannot be any easier than this,
24 just take this chicken, submit it and they will use it to
25 create the label.

Kerzhner - Direct/Filosa

1 Q Were these images submitted to ALB-GOLD?

2 A Yes.

3 Q Just so we have the chronology clear, the order was
4 placed prior to the approval of the label, correct?

5 A Yes.

6 Q Turning to -- can you turn to Plaintiff's Exhibit 11,
7 please.

8 Do you recognize Plaintiff's Exhibit 11,

9 Ms. Kerzhner?

10 A Yes.

11 Q What do you understand it to be?

12 A It's an invoice from ALB-GOLD that I received.

13 Q Who determined the types of pasta identified on these
14 invoices?

15 A Leonid did.

16 Q Who determined the quantities of pasta identified on this
17 invoice?

18 A Leonid.

19 Q Turning to Plaintiff's Exhibit 12, same question: Who
20 determined the varieties of pasta identified in this invoice?

21 A Only Leonid.

22 Q Who determined the varieties?

23 A Also Leonid.

24 Q Did Threeline pay for the pasta identified on Plaintiff's
25 Exhibit 11?

Kerzhner - Direct/Filosa

1 THE COURT: Did you hear the question? Did
2 Threeline pay for it?

3 THE WITNESS: Yeah, yeah, yeah. I'm looking for the
4 document.

5 A Yes.

6 Q And same question for Exhibit 12, did Threeline pay for
7 the pasta identified on Exhibit 12?

8 A Yes.

9 Q To whom was payment made?

10 THE INTERPRETER: Pardon me?

11 Q To whom was payment made?

12 A The payment was made to Trilini International Company,
13 which made a payment in euros for us to Germany.

14 Q Did Threeline reimburse Trilini for this euro
15 transaction?

16 A Yes. There is a check here, number 5457, that made the
17 payment for Trilini International.

18 Q Again, you are referring to Plaintiff's Exhibit 10?

19 A Yes.

20 Q Turning back to Plaintiff's Exhibit 9, do you recognize
21 Plaintiff's Exhibit 9?

22 A Yes.

23 Q Can you explain to the court what that is?

24 A This is the payment that was made from J.P.Morgan Bank to
25 Trilini International for pasta.

Kerzhner - Direct/Filosa

1 Q Can you explain to the court why it is that Trilini paid
2 ALB-GOLD and then Threeline reimbursed Trilini?

3 A Trilini International has a lot of transactions in large
4 sums in different currencies, and usually they have better
5 rates.

6 THE COURT: Isn't that your company, Trilini?

7 THE WITNESS: No.

8 THE COURT: All right. Go ahead.

9 THE WITNESS: Trilini International?

10 THE COURT: Yes. Go ahead.

11 Q Just to clarify, the Trilini company that you are
12 referring to is the Trilini Company International that you
13 previously identified, the shareholders of which are Roman
14 Katsnelson, Arkady Volovik, and Yuri Leschinsky?

15 A Yes.

16 Q Taking a look at Plaintiff's Exhibit 10, do you recognize
17 the handwriting?

18 A Yes.

19 Q Whose handwriting is that?

20 A That's our bookkeeper's.

21 Q Does Threeline -- did Threeline pay Trilini any fee or
22 foreign exchange fee for processing this transaction in euros?

23 A We paid three percent commission to Trilini
24 International.

25 Q Taking a look again on Plaintiff's Exhibit 9, whose

Kerzhner - Direct/Filosa

1 handwriting is that?

2 THE COURT: I thought she just answered that, the
3 bookkeeper.

4 MR. FILOSA: With respect to 10, now 9.

5 THE COURT: Okay.

6 A There were two containers there, and we paid for both
7 containers.

8 THE COURT: He just wants to know whose handwriting
9 is on number 9. I'm going to say it's the bookkeeper.

10 THE WITNESS: Bookkeeper.

11 Q Can you explain to the court what the contents of a
12 container, approximately what are we talking about in terms of
13 boxes, bags?

14 A Each container had from 1200 up to 1400 boxes.

15 Q How many -- approximately how many pieces, how many bags
16 per box?

17 A Fifteen to twenty, depending on the sizes of bags.

18 Q Now, had Trilini previously paid for products bought by
19 Threeline in euros on Threeline's behalf?

20 A They have always made payments, especially when I asked
21 them to, and especially when it's in euros.

22 Q In these instances did Threeline reimburse Trilini for
23 that payment?

24 A Yes, of course. We had the checks and we made payments
25 to them plus the three percent commission.

Kerzhner - Direct/Filosa

1 Q Turning back to Plaintiff's Exhibit 11, did Threeline pay
2 the defendants any fee, any commission, or any other
3 compensation for Threeline's purchase of the ALB-GOLD pasta
4 reflected in the exhibit?

5 A No.

6 Q Turning to Plaintiff's Exhibit 12, same question: Did
7 Threeline pay defendants any fee, any commission, any other
8 compensation for Threeline's purchase of the pasta reflected
9 in this invoice?

10 A No.

11 Q Okay. Again, you see both invoices, Plaintiff's
12 Exhibit 12 and Plaintiff's Exhibit 11, refer a special
13 discount ten percent. Do you see that?

14 A Yes.

15 Q Do you have an understanding of why a special discount of
16 ten percent was given?

17 A Yes.

18 Q All right. What is that?

19 A Leonid wanted to purchase those nest pastas that are in
20 lumps. This factory did not produce those nest pastas. They
21 said that they could provide us this pasta that's produced by
22 another manufacturer but under their label. But we were told
23 to purchase in a large quantity. There were three types, that
24 we need to purchase in a large container.

25 In other words, we purchased two containers right

Kerzhner - Direct/Filosa

1 away, and for doing so we were provided this ten percent
2 discount.

3 Q Who is Cargo Partner Network, Ms. Kerzhner?

4 A This is a company that engaged in ocean freight.

5 Q Do you know if they provided the ocean freight for the
6 shipment of the ALB-GOLD pasta reflected on those two
7 invoices?

8 A Yes, they did.

9 Q Was it part of Mr. Vernikov's responsibilities as an
10 employee of Threeline to arrange for shipment of product to
11 Threeline's warehouse?

12 A Yes. He had the logistics, and this was part of the
13 logistics, how to bring the goods into America.

14 Q Can you take a look at Plaintiff's Exhibit 14.

15 Do you recognize this document?

16 A Yes.

17 Q Can you explain to the court what it is?

18 A This is the invoice from Cargo Partners for one
19 container. One container cost \$1,790.

20 Q Did Threeline pay this invoice?

21 A Yes.

22 Q Was it -- did Cargo Partner again provide shipment for
23 the second container of ALB-GOLD pasta?

24 A Yes.

25 Q So it's 1790 each, for each container?

Kerzhner - Direct/Filosa

1 A Yes.

2 Q Can you turn to Plaintiff's Exhibit 13.

3 THE COURT: Does it say Threeline on any of these,
4 or are we back into the Interpage business? These are all
5 just Interpage?

6 MR. FILOSA: Plaintiff's Exhibit 14 identifies
7 Interpage International Inc.

8 THE COURT: Okay. Go ahead.

9 Q Turning to Plaintiff's Exhibit 13, Ms. Kerzhner, do you
10 recognize that document?

11 A Yes.

12 Q Okay. Does that reflect Threeline's payment to Cargo
13 Partner of the ocean freight for the two containers of
14 ALB-GOLD pasta?

15 A Yes.

16 Q Who is Transportation Services International?

17 A This is a company that brings containers from the port.

18 Q Did Transportation International provide what I will call
19 the inland transportation for the first two containers of
20 ALB-GOLD pasta?

21 A Yes.

22 Q Take a look at Plaintiff's Exhibit 15. You see that's an
23 invoice from Transportation Services to the attention of Maya,
24 Leonid.

25 A It's a delivery order with attention to Maya, Leonid.

Kerzhner - Direct/Filosa

1 Q Did Threeline pay Transportation Services International's
2 invoice in connection with this delivery order?

3 A Yes, of course.

4 THE COURT: Is it a check that says it's from
5 Threeline or from Interpage?

6 THE WITNESS: I paid from Threeline.

7 THE COURT: Paid from Threeline? Okay.

8 Q Again, just to be clear, is the Maya referred to in that
9 exhibit, are you also known as Maya, Ms. Kerzhner?

10 A I'm known only by Maya. Malvina is only on paper.

11 Q Was there a customs broker involved in the shipment of
12 the first two containers of ALB-GOLD pasta product?

13 A Sure. Broker is necessary to import goods.

14 Q Who paid the customs broker fee?

15 A Only Threeline Imports.

16 Q When was the pasta product in the first two containers of
17 the ALB-GOLD shipment delivered to Threeline?

18 A In late January. I think January 24, 2013.

19 Q Did that -- did the pasta product contained in that
20 shipment bear the chicken and egg label at issue in this case?

21 A Yes.

22 MR. FILOSA: May I hand up what's identified as
23 plaintiff's exhibit -- part of Plaintiff's Exhibit 43?

24 THE COURT: Uh-huh.

25 Q Looking at the pasta bag, Plaintiff's Exhibit 43,

Kerzhner - Direct/Filosa

1 Ms. Kerzhner, do you recognize that pasta product?

2 A Yes.

3 Q Is that the label under which pasta product contained in
4 the first two containers of the ALB-GOLD product that was
5 shipped to Threeline by the label that was reflected on that
6 pasta bag?

7 A Yes.

8 Q Do you see the label identifies at the top Delicious
9 Wonders or, better still, DW, that is labeled DW? Do you see
10 that?

11 A Yes.

12 Q When the pasta was received bearing the DW logo did you
13 say anything to Gregory, and did Gregory say anything to you
14 regarding that label?

15 A Leonid became upset that why this DW logo is there and
16 why the tail of the chicken is cut out. Gregory said that
17 this looked better because we needed to fill up the top
18 portion.

19 Q Did you express any disapproval to Gregory, the fact that
20 DW was on the bag?

21 A Yes, of course.

22 Q What did you say to Gregory, and what did he say to you?

23 A Why did we need to put DW here when this label belongs or
24 is associated with the cakes, with frozen cakes.

25 THE COURT: With what?

Kerzhner - Direct/Filosa

1 THE WITNESS: Frozen cakes.

2 THE COURT: Frozen cakes?

3 THE WITNESS: Yeah, frozen cakes.

4 THE COURT: We are going to have to break in about
5 five minutes.

6 MR. FILOSA: So I think this is an actual stop
7 point, Your Honor.

8 THE COURT: So you want to stop now?

9 MR. FILOSA: Yes.

10 THE COURT: We will be in recess until 2:20. You
11 don't have a whole lot left, do you?

12 MR. FILOSA: No.

13 THE COURT: Okay. All right.

14 (Lunch recess.)

15 (Continued on the next page.)

16

17

18

19

20

21

22

23

24

25

KERZHNER - DIRECT - FILOSA

1 A F T E R N O O N S E S S I O N

2 (Time noted: 2:20 p.m.)

3 (In open court.)

4 THE COURTROOM DEPUTY: All rise.

5 THE COURT: Everybody can have a seat.

6 All right, I do want to remind everyone, you know,
7 all good things must come to an end at some point including --
8 I don't have any time for you past this week, so I'm not so
9 sure how much I have to hear about eggplant and other things,
10 I thought -- whatever all those other things you were talking
11 about. I thought the issue here was the chicken and egg.

12 So I take your point about some of it in terms of
13 background, but I don't think it is really advancing the ball.

14 All right. Do you want to have the witness take the
15 stand again?

16 (Whereupon, the witness resumes the stand.)

17 THE COURTROOM DEPUTY: The witness is reminded that
18 she's still under oath.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION (CONTINUED)

21 BY MR. FILOSA:

22 Q All right, Ms. Kerzhner, following Threeline's receipt of
23 the shipment of the first three ALB-GOLD pasta containers, did
24 Threeline sell those pasta products to its customers?

25 A Yes.

KERZHNER - DIRECT - FILOSA

1 Q And when did Threeline commence selling that product?

2 A The same date that we received it. It was the end of
3 January, something around the 20th or so.

4 Q Take a look at Exhibit 38 in plaintiff's book, please.

5 Do you recognize Plaintiff's Exhibit 38,

6 Ms. Kerzhner?

7 A Yes.

8 Q And what do you recognize that to be?

9 A Those are our invoices.

10 Q For the sale of the ALB-GOLD pasta products?

11 A That includes ALB-GOLD pasta.

12 Q To whom did Threeline sell the ALB-GOLD pasta products?

13 A There are stores, there are wholesale.

14 THE COURT: I take it they're all on the invoices,
15 correct?

16 MR. FILOSA: Correct.

17 THE COURT: No need to go through each one.

18 Q And where are those customers located, just explain to
19 the Court?

20 THE COURT: I can also take a guess here just by
21 looking at it that they're in Brighton Beach or in Brooklyn?

22 Can't I just read them and tell where they are, each
23 one? I mean I'm looking at first one it says "Brooklyn, New
24 York," and -- oh, here's something from Burnsville, Minnesota.

25 So I can see. I can read. So if you want to make

KERZHNER - DIRECT - FILOSA

1 argument -- they're in evidence, if you want make arguments
2 about them later, that's fine.

3 Next question.

4 Q Can you just identify for the Court, turn to Plaintiff's
5 Exhibit 39.

6 A Yes.

7 Q Just identify what that is for Court, please.

8 A It's an excerpt from QuickBooks. It's a report from the
9 first day of sale.

10 Q For a particular type of ALB-GOLD pasta?

11 A Of each particular type.

12 Q Turn to Plaintiff's Exhibit 40, and just explain to the
13 Court what that is?

14 A It's a similar report for another item. It's
15 Schitznoodle. It's a different name of a pasta.

16 Q And that's a variety of ALB-GOLD pasta product, a noodle
17 type?

18 A Yes.

19 Q And again just collectively, if we do the same for
20 Exhibit 62 through 68?

21 A We have nine types of pasta, and these are the nine types
22 of pasta in the first two containers.

23 Q And, again, turning to Plaintiff's Exhibit 69, can you
24 identify that for the Court?

25 THE COURT: I take it this is another excerpt of the

KERZHNER - DIRECT - FILOSA

1 records; is that right?

2 MR. FILOSA: Yes.

3 A Yes, it's some other report that's also related to pasta.

4 Q Take a look at Plaintiff's Exhibit 16, please.

5 A Okay.

6 Q Do you recognize that document?

7 A It's a contract between ALB-GOLD and Interpage Co. Inc.

8 Q You see identified Interpage Co. Inc. as a distributor.

9 Do you have an understanding why the agreement was
10 executed by Interpage Co. Inc.?

11 A It was our company, Interpage Co. Inc.

12 Q Now, following Threeline's sale of the entirety of the
13 contents of the first two containers of ALB-GOLD pasta,
14 Threeline continued to purchase product from ALB-GOLD,
15 correct?

16 A Yes.

17 Q Can you turn to Plaintiff's Exhibit 70, please.

18 THE INTERPRETER: Did you say 17?

19 MR. FILOSA: 7-0, I'm sorry.

20 A Okay.

21 Q Can you just identify these documents for the Court, what
22 do you understand them to be?

23 A That's also an invoice from ALB-GOLD, but in 2014.

24 Q And Threeline paid for these invoices for the product
25 reflected in these invoices?

KERZHNER - DIRECT - FILOSA

1 A Yes.

2 Q Again, did they pay under the same arrangement with
3 Trilini, where this was quoted in euros, paid by Trilini in
4 euros and reimbursed by Trilini in U.S. dollars?

5 A Yes.

6 Q And, again, the pasta that was reflected -- that was
7 purchased from ALB-GOLD, reflected in Plaintiff's Exhibit 70,
8 that pasta bore the chicken and egg trademark?

9 A Yes.

10 MR. FILOSA: I'd like to offer up further samples of
11 the ALB-GOLD pasta product bearing the chicken and egg mark.

12 THE COURT: Any objection?

13 MR. DRANGEL: No.

14 THE COURT: Just tell us what number this is.

15 Do you have to transfer -- do you need all the bags
16 over on your table? Are you going to show them to her?

17 MR. ROSENBERG: I'm going to show them to the
18 witness and to the Court. This is all part of 43, Your Honor.

19 Does the Court want to have a bag?

20 THE COURT: No, I do not. Thank you.

21 BY MR. FILOSA:

22 Q Ms. Kerzhner, do you recognize those products to be the
23 products which Threeline sold under the chicken and egg
24 trademark label?

25 A Yes.

KERZHNER - DIRECT - FILOSA

1 Q See the bag identified that the pasta product is kosher.

2 Do you see that?

3 A Yes.

4 Q Do you know if the pasta products sold by defendants
5 under its chicken and egg label is kosher?

6 A No.

7 Q No, it is not or, no, you don't know?

8 A It was not kosher.

9 Q Other than the chicken and egg mark at issue in this
10 case, has Threeline applied for and received trademark
11 registration of other trademarks?

12 A Yes.

13 Q Can you turn to Plaintiff's Exhibit 19, please.

14 THE COURT: Can you just -- why is this relevant?
15 Why do I care about the other ones?

16 MR. FILOSA: Can I have a proffer outside the
17 presence of the witness or...

18 THE COURT: I thought we were here to decide one
19 discrete issue.

20 MR. FILOSA: Can we have a sidebar?

21 THE COURT: Fast one, yes.

22 (Continued on the next page.)

23 (Sidebar conference.)

SIDEBAR CONFERENCE

1 MR. FILOSA: Again, Your Honor, the relevance of
2 offering other Threeline registered trademarks with the
3 chicken and egg is, again, it shows that these trademarks were
4 registered while Mr. Vernikov was an employee.

5 The evidence will show that Threeline sold these
6 products that are on the registered trademark --

7 THE COURT: Okay, do you stipulate to this?

8 MR. DRANGEL: Yes.

9 THE COURT: Okay, good.

10 MR. ROSENBERG: And that his client --

11 THE COURT: Wait. Wait.

12 MR. ROSENBERG: His makes no claim --

13 MR. FILOSA: His client makes no claim to those
14 trademarks, which they've stipulated to.

15 MR. DRANGEL: Which is already a stipulated fact.

16 THE COURT: I just don't care about it.

17 If I don't have to think about it, I would rather
18 not. Because there are three people who seem to own about 17
19 companies. So if I don't have to worry about other
20 trademarks, I really would rather not hear it.

21 MR. FILOSA: It just shows to the Court is the
22 performance, because on that label, Mr. Vernikov's Interpage
23 company is identified on the rear of the label, yet he claims
24 no right, title or interest in that product. We sold it
25 without his objection.

SIDEBAR CONFERENCE

1 THE COURT: Do I have to have this lady testify
2 about this?

3 MR. FILOSA: Will they stipulate to that?

4 MR. DRANGEL: It's already stipulated.

5 THE COURT: I'm going to stop everyone. You cannot
6 talk over one another because the court reporter can't take it
7 down.

8 So your question is will they stipulate to what?

9 MR. FILOSA: The fact that those products were sold
10 under a Threeline registered trademark, again, bearing on the
11 rear of the label identification of Mr. Vernikov's Interpage
12 company.

13 MR. DRANGEL: Yes.

14 THE COURT: Good.

15 MR. FILOSA: Without his objection.

16 THE COURT: All right, so that -- so that means we
17 don't have to ask any more questions about it.

18 MR. FILOSA: We wouldn't go through that colloquy,
19 Your Honor. Thank you.

20 (End of sidebar conference.)

21 (Continued on the next page.)

22

23

24

25

KERZHNER - DIRECT - FILOSA

1 (In open court.)

2 BY MR. FILOSA:

3 Q Ms. Kerzhner, was it a part of Mr. Vernikov's duties as
4 an employee of Threeline to participate in the creation and
5 design of labels?

6 A Yes.

7 Q And did you communicate with Mr. Vernikov, while he was
8 an employee, regarding the creation and design of other
9 labels, other than the chicken and egg?

10 A Sure. Yes.

11 Q Take a look at Plaintiff's Exhibit 46. This is an email,
12 Bates numbered in the lower right-hand corner Threeline 0045.

13 See the email in the middle of the page from
14 Gregory@Trilini to AKerzhner@KerzhnerLaw, cc to Maya@Trilini?

15 A You said what page?

16 Q Page 45.

17 THE COURT: Is the defense disputing any of this
18 stuff about Granny's Farm? I'm not sure what -- I mean this
19 has nothing do, again, with the chicken and egg, correct?

20 MR. FILOSA: Correct. This doesn't relate to the
21 chicken and egg mark.

22 MR. DRANGEL: Yes, Your Honor, we stipulated to
23 these facts.

24 THE COURT: So there you have it. Let's move on to
25 something that's not stipulated.

KERZHNER - DIRECT - FILOSA

1 BY MR. FILOSA:

2 Q Again, Ms. Kerzhner, turning your attention back to the
3 pasta product contained in the first two containers of the
4 ALB-GOLD shipment, the bag we marked as the first Plaintiff's
5 Exhibit 43.

6 A Yes.

7 Q And, Ms. Kerzhner, you see that pasta bag contains a
8 barcode.

9 Do you see that?

10 A Yes.

11 Q While Mr. Vernikov was employed by Threeline, did you
12 ever have a conversation with Mr. Vernikov regarding the use
13 of barcodes on Threeline products?

14 A Yes.

15 Q What did you say to him and what did he say to you?

16 A When it was time that we needed barcodes for some
17 product, Gregory Vernikov told me that, Maya, you don't need
18 to buy barcodes, I have barcodes that I have had for a long
19 time and have used.

20 Q Okay. Now, the barcode reflected on Plaintiff's
21 Exhibit 43, is that one the barcodes that you just referred to
22 moments ago?

23 A Probably. Yes.

24 Q Now, turning your attention to Plaintiff's Exhibit 21.

25 A Okay.

KERZHNER - DIRECT - FILOSA

1 Q Do you recognize this product?

2 A Yes.

3 Q Is that product a product that Threeline sold?

4 A Yes.

5 Q Under its Granny Farm trademark?

6 A Yes.

7 Q Do you recognize the barcode there?

8 A Yes.

9 Q Okay. Is that one of the barcodes that you testified to
10 moments ago that was the subject matter of your discussion
11 with Mr. Vernikov?

12 A Yes.

13 Q Mr. Vernikov's employment with Threeline ended on or
14 about April 20, 2013, correct?

15 A Yes.

16 Q How did his employment terminated?

17 A He came to my office and said, "Maya, I'm leaving."

18 Q What, if anything, did you say in response?

19 A What could I say. He was leaving, he could leave.

20 THE COURT: So you didn't have any fights or
21 anything like that before, he just walked in and said "I'm
22 leaving"?

23 THE WITNESS: Previous to that he had said that he
24 might start working for himself.

25 THE COURT: Go ahead.

KERZHNER - DIRECT - FILOSA

1 BY MR. FILOSA:

2 Q Now, Ms. Kerzhner, there came a time that Threeline
3 applied for and received federal registration, trademark
4 registration for the chicken and egg mark, correct?

5 A Yes.

6 THE COURT: That's also stipulated, right?

7 MR. FILOSA: Yes.

8 THE COURT: The dates and all that?

9 Q Take a look at Plaintiff's Exhibit 2, Ms. Kerzhner.

10 A Yes.

11 Q What do you -- do you recognize this to be the trademark
12 registration?

13 THE COURT: This is stipulated, right?

14 MR. FILOSA: Yes.

15 THE COURT: Okay.

16 A Yes.

17 THE COURT: I got that.

18 Q Who prepared the application for Threeline, for the
19 registration of the trademark?

20 A My son, Alex Kerzhner.

21 Q And who provided Alex with the information contained in
22 the application?

23 A I did.

24 Q Now following the registration of the mark, did Threeline
25 continue to sell pasta products bearing the registered

KERZHNER - DIRECT - FILOSA

1 trademark?

2 A Yes.

3 Q Now, did there come a time that Threeline discovered that
4 defendants were selling product bearing the Threeline
5 registered trademark?

6 A Yes.

7 Q Did Threeline at any time authorize defendants to sell
8 product bearing the Threeline registered trademark?

9 A No.

10 Q And what, if anything, did Threeline do upon discovering
11 that defendants were selling product bearing the Threeline
12 registered trademark?

13 A We first sent him a letter that he cannot sell. But no
14 one responded to us.

15 Q Take a look at Plaintiff's Exhibit 27.

16 Is that the letter you're referring to?

17 A Yes.

18 Q What, if anything, did Threeline do thereafter, after
19 sending this letter and receiving no response, what did
20 Threeline do?

21 A As far as I remember, we sent him another letter and
22 there was no response.

23 Q Take a look at Plaintiff's Exhibit 34.

24 Do you recognize that document as the -- that's the
25 letter that you previously testified to?

KERZHNER - DIRECT - FILOSA

1 A Yes, we were waiting for his response and he did not want
2 to respond or communicate to us.

3 Q Has Threeline received any complaints from any party
4 regarding defendants' sale of pasta product bearing the
5 chicken and egg mark?

6 A In the beginning, when Gregory started selling the
7 products on his own by himself, we started receiving
8 complaints from customers in the summer of 2013 that Gregory
9 was selling the same pasta for a cheaper price.

10 THE COURT: They were complaining about that?

11 THE WITNESS: Yes, clients refused to purchase our
12 products, because Gregory was providing at cheaper price.

13 THE COURT: So they called to complain, to say that?

14 THE WITNESS: Yes, when our salespersons called to
15 place an order, they would hear that another company was
16 giving a cheaper price for the product.

17 THE COURT: Oh, I see. So nobody called you up and
18 said -- and complained to you, this was just something that a
19 customer said when your representative called them?

20 THE WITNESS: Correct. We usually call the
21 customers to place the order.

22 THE COURT: I see.

23 BY MR. FILOSA:

24 Q Did Threeline receive any complaints regarding the
25 quality of the pasta product that defendants' sold under the

KERZHNER - DIRECT - FILOSA

1 chicken and egg label?

2 A Initially, no. Initially, no, when he was selling
3 this -- this pasta from this shipment. But later when he
4 started importing a different pasta with the same label,
5 clients did not complain to us, but they realized that the
6 pasta was of lower quality and they started coming back to us.

7 THE COURT: They started doing what?

8 THE WITNESS: They started purchasing from us again
9 when they realized that the pasta that was cheaper from the
10 other company.

11 THE COURT: So who did that? Who did --

12 THE WITNESS: Gregory.

13 THE COURT: No, no, no. Who's the person that said
14 that they -- who started buying from you again who hadn't
15 bought from you before?

16 THE WITNESS: Many clients that used to purchase
17 from us, they returned.

18 THE COURT: Name one. Give me a name of one.

19 THE WITNESS: There are a lot of them. There's a
20 store, Dina's, in Staten Island. There was client in Chicago.
21 I forgot the name.

22 THE COURT: Okay, go ahead.

23 BY MR. FILOSA:

24 Q Ms. Kerzhner, are you familiar with a company, Hyson USA?

25 A Yes.

KERZHNER - DIRECT - FILOSA

1 Q Where is Hyson USA located?

2 A Hyson, Chicago.

3 Q Is that one of the companies that you previously
4 testified to that you received a complaint from regarding the
5 quality of the product that defendants sold?

6 THE COURT: Is that person -- before you answer that
7 question, is that person going to testify here?

8 MR. FILOSA: They're not.

9 A Yes, there was also Grante and Hyson, they're both in
10 Chicago.

11 Q What did Hyson -- what did a representative from Hyson
12 say to you and what did you say to that person regarding --

13 THE COURT: How is this admissible? I just want to
14 know, under what theory does a person who will never come in
15 here and be cross-examined, how do this come into evidence? I
16 don't understand.

17 MR. FILOSA: Well, to the extent we're not offering
18 it for the truth of its content, but at the very least the
19 fact that she received a complaint, not necessarily the fact
20 that, again, it's offered for the truth of its content. So on
21 that basis.

22 THE COURT: Some person that will never testify.

23 All right, I'll take it for what its worth. Go ahead.

24 You can answer.

25 A Can you repeat the question.

KERZHNER - DIRECT - FILOSA

1 Q What did the person from Hyson say to you and what did
2 you say in response?

3 A The pasta with our logo is sold in stores at a cheaper
4 price and it differs in color than our pasta. Under the same
5 label.

6 THE COURT: More bags, the same thing?

7 MR. ROSENBERG: This is the discolored pasta that
8 was --

9 THE COURT: Okay. Go ahead.

10 MR. ROSENBERG: May I approach the witness?

11 BY MR. FILOSA:

12 Q Ms. Kerzhner, take a look at the bag of pasta which we
13 will have marked as part of Plaintiff's Exhibit 43.

14 Do you recognize that bag of pasta?

15 A Yes.

16 Q What do you recognize it as?

17 A This is the pasta from Armbruster company. This is the
18 same chicken logo.

19 Q And was this pasta product sold by defendants under the
20 chicken and egg label?

21 A Yes.

22 Q Can you explain to the Court the significance between the
23 difference in the color of that pasta product versus the same
24 Threeline pasta products, which you should have on the bag,
25 the same variety sold under the Threeline chicken and egg

1 label?

2 A This pasta is of a worst quality. And it differs in
3 color and it's not kosher.

4 You could see the difference once it's cooked.

5 Q Is the fact that the Threeline brand of chicken and egg
6 pasta kosher important to Threeline?

7 THE WITNESS: (In English.) Sure.

8 Q And why is that?

9 THE COURT: Wait, wait, wait.

10 A Yes.

11 THE COURT: Let's have the interpreter -- I don't
12 want it in English. Let him translate the question.

13 Did you get it?

14 THE INTERPRETER: The answer is "sure".

15 Q And why is that? Can you explain to the Court, please?

16 A Because we have a kosher client that only uses kosher
17 pasta.

18 MR. FILOSA: No further questions, Your Honor.

19 THE COURT: All right. Cross-examination?

20 Just be mindful of the interpreter so you're not
21 talking over him.

22 CROSS-EXAMINATION

23 BY MR. DRANGEL:

24 Q Good afternoon, Ms. Kerzhner, thank you for being here.

25 I'm going to draw your attention first to an exhibit

KERZHNER - CROSS - DRANGEL

1 that plaintiff had you already look at, it's Plaintiff's
2 Exhibit 44.

3 Are you familiar with that exhibit?

4 A Yes.

5 Q Can you tell me what that is?

6 A Oh, it's a business card of Gregory.

7 Q Okay. And it says the company is Trilini Imports,
8 correct?

9 A Yes.

10 Q Did you work for a company named Trilini Imports?

11 A Yes.

12 Q And when did the Trilini Imports company cease to
13 exhibits?

14 A In 2006.

15 Q Okay. And when did -- Threeline Imports, when was that
16 incorporated?

17 A In June 2006.

18 Q And was Gregory Vernikov a employee of Trilini Imports at
19 any time?

20 THE WITNESS: (In English.) He was employee of
21 Trilini Imports, but...

22 THE COURT: Why don't you do it with the
23 interpreter.

24 THE WITNESS: (In English.) Oh.

25 A At that time he was not an employee.

KERZHNER - CROSS - DRANGEL

1 Q Okay. Why would he have a Trilini Imports' business card
2 then?

3 A Because he worked with us for Trilini Imports.

4 THE COURT: I thought you just said he didn't work
5 for Trilini Imports?

6 THE WITNESS: He did not work on a salary, on a W2,
7 but he -- he showed this business cards, and he used it
8 whenever he was traveling.

9 THE COURT: I'm sorry, you said he did not work on a
10 salary, didn't get a W2, but what else?

11 THE WITNESS: 1099.

12 THE COURT: So he got paid by Trilini Imports?

13 THE WITNESS: Yes.

14 THE COURT: So he did work for Trilini Imports?

15 THE WITNESS: Yes.

16 BY MR. DRANGEL:

17 Q Are you confusing Threeline and Trilini Imports?

18 A No.

19 Q Okay. So he received 1099s both from Threeline Imports
20 and Trilini Imports?

21 A Trilini existed until 2006. In 2006, Threeline Imports
22 was incorporated.

23 Q And, again, the question was:

24 Did he, Gregory Vernikov, receive 1099 payments on
25 behalf of one or both of those entities?

KERZHNER - CROSS - DRANGEL

1 A Until he became an employee in 2009.

2 Q Have any 1099 statements been produced in this matter?

3 A I do not know.

4 Q As far as you know, 1099 statements exist that were
5 issued to Gregory or to Interpage Co.; do you know?

6 MR. FILOSA: Objection to the extent it assumes
7 facts not in evidence. There hasn't been any testimony that
8 the 1099s were issued to Interpage Co.

9 THE COURT: I mean, if she knows.

10 A I do not know, Your Honor.

11 Q Okay, between the years of 2006 and 2009, before Gregory
12 Vernikov became an employee, what types of compensation did he
13 receive other than 1099 from Threeline?

14 A He could receive commissions for sold products, but not
15 as a buyer.

16 Q So he received a 1099 as a buyer, and in addition he
17 received commission payments?

18 A He could receive commissions if he sold something, yes,
19 if he went physically and sold goods.

20 Q Are you aware that he ever did that?

21 A Yes.

22 Q Whose products were those? Were those Threeline products
23 or Interpage products?

24 A Only Threeline Imports. He did not have his own
25 products.

1 Q Okay. So he would be paid a commission based on how many
2 units he would sell of a product of Threeline's; is that
3 correct?

4 A Yes.

5 Q Was he paid a flat fee per month?

6 A No, there were additional commissions if he sold
7 something extra.

8 Q Was he paid a flat salary between the years 2006 and
9 2009, Gregory Vernikov?

10 A No.

11 Q Was Interpage, Gregory Vernikov's Interpage, paid a flat
12 amount per month while he was in Threeline warehouse between
13 2006 and 2009?

14 THE COURT: You have to let him finish asking the
15 question.

16 A Approximately. But not exactly the same.

17 Q Okay. And was that payment made to Interpage Co. or to
18 Gregory Vernikov himself?

19 A I do not remember.

20 MR. WOLGANG: Your Honor, may I?

21 THE COURT: Yes.

22 (Pause.)

23 MR. DRANGEL: Your Honor, I'm going to approach the
24 witness and hand her a new exhibit, which is a printout of a
25 document that's taken from the QuickBook database that we

KERZHNER - CROSS - DRANGEL

1 talked about earlier.

2 It's in response to statements that -- by the
3 witness that our client was only paid by 1099, and we have
4 evidence that, in fact, Interpage Co., a company that they say
5 did not exist, received commission payments. So we'd like to
6 introduce that.

7 THE COURT: Is this from the plaintiff's records?

8 MR. DRANGEL: These are all from plaintiff's
9 records.

10 THE COURT: All right, let's just show it to
11 counsel.

12 MR. DRANGEL: I have copies.

13 THE COURT: All right. Any objection?

14 MR. ROSENBERG: Your Honor, can we just have one
15 minute because we haven't seen it.

16 THE COURT: Yes.

17 You haven't seen it before?

18 MR. FILOSA: No, we have not.

19 MR. DRANGEL: It's a printout from the actual
20 database itself.

21 THE COURT: I see.

22 MR. FILOSA: No objection, Your Honor.

23 THE COURT: Okay. So what number is this?

24 MR. DRANGEL: This is Exhibit BG.

25 THE COURT: BG? B like boy, G like George.

1 MR. DRANGEL: Correct.

2 THE COURT: All right.

3 BY MR. DRANGEL:

4 Q Ms. Kerzhner, who had access to the QuickBook database at
5 Threeline?

6 A We have several employees that have access to that
7 database. We have several folks that enter data into
8 QuickBooks.

9 Q Okay. And as far as officers, I assume you have access
10 to QuickBooks?

11 A Yes.

12 Q And does Lenny Kerzhner have access to QuickBooks?

13 A He only looks at it, he doesn't do anything.

14 THE COURT: Does he have access to it, that's the
15 question.

16 A Yes.

17 Q Okay. With regard to this document, it appears to show
18 payments to Interpage Co. between the years of 2006 and 2009,
19 and they appear to be monthly or semi-monthly, and some of the
20 designations identify the payment as commission.

21 Can you confirm that these payments --

22 THE COURT: You know --

23 MR. DRANGEL: Sorry.

24 THE COURT: -- you have an interpreter. Start over
25 again, if you can.

KERZHNER - CROSS - DRANGEL

1 Q Okay. With regards to this document, it identifies
2 Interpage Co., and a number of payments made between 2006 and
3 2009 to the Interpage Co. In some of them were memo notes
4 indicating commission.

5 Can you confirm that these were monthly commission
6 payments to Interpage Co.?

7 A They were not monthly, we don't see monthly payments
8 here. There are some payments for 2006, 2008, but it's not
9 monthly.

10 Q Okay, but they appear to be flat amounts that are
11 somewhat consistent; 3,000, 6,000, 3,000.

12 Are they actual commissions, or are they flat
13 monthly payments for services rendered?

14 A They are flat payments. We did not pay commissions to
15 Mr. Vernikov.

16 Q Is this in addition to the 1099 payments that you said
17 were made?

18 A No, these are the amounts that were part of the 1099.

19 THE COURT: All right, I don't have the exhibit in
20 front of me.

21 Are these payments to Interpage?

22 MR. DRANGEL: These -- sorry.

23 THE COURT: That's all right.

24 MR. DRANGEL: Yes, these are actual payments made to
25 Interpage Co.

1 THE COURT: So this is a different Interpage Co.
2 than Interpage Co. Inc., correct?

3 MR. DRANGEL: That's the question that we need
4 answered.

5 THE COURT: Oh.

6 BY MR. DRANGEL:

7 Q Is this Interpage Co. Gregory Vernikov's Interpage Co.?
8 A 2007 and '8, yes.

9 Q So, in fact, Gregory Vernikov did run a business from
10 your warehouse between the years of 2006 and 2009 called
11 Interpage Co.; is that correct?

12 A He did not run our warehouse business.

13 THE COURT: The question is this: This company
14 Interpage company, this was connected with Mr. Vernikov,
15 correct?

16 THE WITNESS: Yes.

17 THE COURT: And you knew about it, correct?

18 THE WITNESS: Yes.

19 THE COURT: And did he run it out of your warehouse?

20 THE WITNESS: Well, maybe. Maybe from his home.
21 Maybe from the warehouse. I'm not sure.

22 THE COURT: Next question.

23 BY MR. DRANGEL:

24 Q Did Interpage Co. run its own business out of your
25 warehouse between the years 2006 and 2009?

KERZHNER - CROSS - DRANGEL

1 A In my understanding, no.

2 Q Did you give free rent to Mr. Vernikov to run his
3 Interpage business to Mr. Vernikov between the year 2006 and
4 2009?

5 A He not have his own business and we did not rent out
6 anything to him free of charge.

7 Q And you did not buy products from the Interpage Co.
8 company or Mr. Vernikov between 2006 and 2009; is that
9 correct?

10 A We did not buy from him.

11 THE COURT: So I am so confused. You said different
12 things each time you're asked a question, and maybe I'm just
13 not understanding.

14 Did Mr. Vernikov have or not have a company called
15 Interpage in the time period that the lawyer is asking you
16 about?

17 THE WITNESS: Yes.

18 THE COURT: So the answer is "yes," correct?

19 THE WITNESS: Yes, he did.

20 THE COURT: Next question.

21 BY MR. DRANGEL:

22 Q Okay, if you can take a look at Defendants' Exhibit C.

23 MR. WOLGANG: Your Honor, can I give her a binder?

24 THE COURT: Sure.

25 Q Okay, just an initial question before we get into those

1 documents.

2 Did Threeline have any distribution contracts with
3 any foreign manufacturers prior to the date that Gregory
4 Vernikov came to the Threeline warehouse in 2006?

5 A Yes, of course, we did.

6 Q Can you name those distribution agreements, who were the
7 distributors?

8 A Kharvik Bisquit Company.

9 Factory Akkond in Russia.

10 Slavianka factory in Russia.

11 Red October.

12 Some other small ones we brought company Resource.

13 Q Were these contracts with Threeline Imports or Trilini
14 International?

15 A Some of them were Trilini International and some were
16 with Threeline Imports.

17 Q Okay, which ones were with Threeline Imports?

18 A I don't remember.

19 Q Isn't it true that there are no Threeline Imports
20 distribution agreements before 2006 only with Trilini
21 International?

22 MR. FILOSA: Objection. Asked and answered.

23 THE COURT: Overruled.

24 A Trilini Import or Trilini International?

25 Q Trilini International.

KERZHNER - CROSS - DRANGEL

1 A Or Trilini Import. We were Trilini Import.

2 Q When Gregory Vernikov came to your warehouse in 2006, are
3 you aware that he had exclusive and nonexclusive distribution
4 rights that he brought with him?

5 MR. FILOSA: Objection. And to form, it assumes
6 facts not in evidence.

7 THE COURT: Overruled.

8 A I knew of two, yes.

9 Q What were those? Who were the distributors?

10 A Brivais Vilnis canned fish, and Alex Water, mineral
11 water.

12 Q Okay. The first page of Exhibit C appears to be a
13 contract with Brivais Vilnis. That's IPV00432 through IPV436;
14 is that correct?

15 A Yes.

16 Q Okay. And who is party to this agreement?

17 A Probably Interpage.

18 Q Okay, and is this Interpage -- the Interpage -- I'm going
19 to refer to Interpage as my client, and the company that
20 you've designated as having an interest in Interpage Co. Inc.,
21 okay?

22 Is this agreement with Interpage Co.?

23 THE COURT: Wait a second. You have to give the
24 interpreter a chance to finish.

25 Q Is this agreement with Interpage or Interpage Co. Inc.?

KERZHNER - CROSS - DRANGEL

1 A Interpage Co., with Gregory Vernikov.

2 Q And what's the year of this contract?

3 A 2002.

4 Q If you look to the last page of this contract, who signed
5 it? IPV436.

6 A I don't know, there's no signature here.

7 Q There actually is a signature there.

8 Do you recognize that signature?

9 A Gregory.

10 Q And the stamp, is that the same Interpage Co. stamp that
11 appears on the Franz Tress agreement and the ALB-GOLD
12 agreement?

13 A Yes.

14 Q Did Threeline purchase Brivais Vilnis products from
15 Interpage?

16 A We purchased products from Brivais Vilnis and Alex Water,
17 but not through Interpage. We had directly purchased from
18 Brivais Vilnis and we had their invoices.

19 Q Well, doesn't this show that Brivais Vilnis agreement is
20 actually with the Interpage Co. company?

21 MR. FILOSA: Object to the form.

22 THE COURT: Overruled.

23 A You know, I have never seen these contracts. I placed
24 the orders and made the purchases, but I did not see these
25 contracts.

1 Q Did you place the orders through Gregory?

2 A Leonid discussed the orders with Gregory and -- but
3 Gregory never placed orders on his own.

4 Q So who would have placed the orders?

5 A Leonid would make the order, give the paper to Gregory,
6 and Gregory would deliver it to Brivais Vilnis.

7 Q Okay, and that is through Mr. Vernikov's Interpage Co.
8 company; is that correct?

9 A It was through Gregory Vernikov as a person, he did not
10 do it through a company.

11 THE COURT: What time period did this happen in?

12 MR. FILOSA: I believe 2002, Your Honor.

13 THE COURT: All right, well I was asking the defense
14 counsel.

15 What, 2002?

16 MR. DRANGEL: Well, we can ask the witness.

17 Q How long did this -- these former transactions with
18 Brivais Vilnis take place?

19 A Until he left from 2004 -- 2004 or '5.

20 THE COURT: Through 2013?

21 THE WITNESS: Yes.

22 BY MR. DRANGEL:

23 Q I'm going to have you take a look at Defendants' Exhibit
24 P, if you would.

25 A Okay.

1 Q Okay, are you familiar with -- can you describe to me
2 what these documents are?

3 A It's a copy of a wire transfer.

4 Q Okay, and who made these wire transfers?

5 A I think I did, but I don't recognize it.

6 Q Okay, let's specifically look at IPV248 to 249.

7 Can you tell me what these documents are?

8 A It's a wire transfer of our company on behalf of
9 Interpage for Brivais Vilnis.

10 Well, I didn't transfer it to Interpage, I
11 transferred it to Brivais Vilnis.

12 Q Okay, but it says "on behalf of Interpage," so when you
13 say "Interpage," you mean Gregory Vernikov's Interpage?

14 A Yes.

15 Q And that was 2009, correct?

16 A Yes.

17 Q And if you can look a few pages later, IPV255 to IPV256,
18 is that another payment a few years later, 2011, to Brivais
19 Vilnis on behalf of Interpage?

20 A Yes.

21 Q Okay, so isn't it clear that you have purchased products
22 that Interpage Co. owned by Gregory Vernikov during the time
23 period that he was an employee of Threeline?

24 A You showed me a document that was dated 2009, the
25 Interpage, the previous document, and at that time, Gregory's

KERZHNER - CROSS - DRANGEL

1 Interpage did not exist.

2 THE COURT: What about the 2011 one?

3 THE WITNESS: Yes, and this Interpage was our
4 company. I did not distinguish it with the other Interpage.
5 It was all our part of our company, he did not sell to anybody
6 else.

7 BY MR. DRANGEL:

8 Q Did Interpage Co. Inc. have a contract with Brivais
9 Vilnis?

10 A No.

11 Q In 2009 or 2011; is that correct?

12 A He did not.

13 Q Isn't it clear that you actually did consistently
14 purchase products from Interpage Co., Gregory Vernikov's
15 Interpage Co., between the time period that he was in the
16 warehouse from 2006 to 2013?

17 A Gregory Vernikov worked for our company, for Threeline
18 Imports.

19 THE COURT: So the answer is "no," is that what
20 you're saying?

21 THE WITNESS: No.

22 BY MR. DRANGEL:

23 Q Okay, did you have a contract with Roshen at Threeline?

24 A No, it was Gregory Vernikov's contract.

25 Q And it was not Interpage Co. Inc.'s contract, correct?

1 A Maybe.

2 Q Well, does Interpage Co. Inc. have a contract with
3 Roshen, as far as you know?

4 A I don't know.

5 Q If we look back two pages, IPV244 to 245, does that
6 represent a payment by you on behalf of Interpage Co. to
7 Roshen? In 2009?

8 A Yes.

9 Q And that's -- the statement clearly says invoices 43, 44
10 and 45 with a contract Roshen from 10/4/08 on behalf of
11 Interpage, correct?

12 A 2009, yes.

13 THE COURT: There's no question. There's no
14 question to the witness right now. Next question.

15 BY MR. DRANGEL:

16 Q Do you dispute any of the other payments that are in this
17 Exhibit P were made on behalf of Interpage Co., Gregory
18 Vernikov's Interpage Co.?

19 A Interpage Co. was our company, part of Threeline. Why
20 was I not supposed to pay? I don't understand.

21 THE COURT: Are you saying that the Interpage Co.
22 that is on these invoices does not belong to Mr. Vernikov? Is
23 that your testimony?

24 THE WITNESS: No, I do not want to say that.

25 These are the documents that we used and the name

KERZHNER - CROSS - DRANGEL

1 Interpage was -- the name that we used alongside with
2 Threeline.

3 THE COURT: But that's not my question. My question
4 is: These invoices indicate that this is Interpage Inc.,
5 correct? Interpage Co. Sorry, Interpage Co. Correct?

6 THE WITNESS: Yes.

7 THE COURT: And that is not your company; is it?

8 That's a pretty simple answer.

9 Interpage Co., is that your company or not?

10 THE WITNESS: Interpage Co.?

11 THE COURT: Interpage Co., is that your company?

12 THE WITNESS: Interpage Co. Inc. is our company.

13 THE COURT: Correct. And that is not the -- I'm
14 talking about the company that is referred to in these
15 documents, Interpage Co.

16 Is that or is that not your company?

17 It's either a "yes" or "no" answer. Is it your
18 company or is it not?

19 THE WITNESS: No.

20 THE COURT: It is not.

21 All right, next question.

22 BY MR. DRANGEL:

23 Q If you could take a look at Defendants' Exhibit R, and
24 tell me what these documents appear to be.

25 (Whereupon, the witness is reviewing the document.)

1 A Okay.

2 Q Are these payments that were made by Threeline Imports to
3 Interpage Co., Gregory Vernikov's Interpage Co.?

4 A Yes.

5 Q Okay, and what were these payments made for?

6 A It's hard to say from looking at this, but if he made
7 payments, then we reimbursed him as the course of business but
8 it doesn't say it here.

9 Q Are these for the purchase of foods products from
10 Interpage Co.?

11 A Maybe he paid for something and we reimbursed him for it.
12 I cannot say.

13 THE COURT: All right, here's one. Let's look at
14 page -- the page number ending in 275.

15 It says that in 2010, in July, you paid him -- you
16 paid Interpage Co., which is his company, correct?

17 THE WITNESS: (In English.) Uh-huh.

18 THE COURT: You paid him \$66,000 and some.

19 THE WITNESS: (In English.) Uh-huh.

20 THE COURT: What's that for?

21 THE WITNESS: Articom. Articom.

22 What was Articom?

23 THE WITNESS: (In English.) Probably for sunflower
24 seeds.

25 THE COURT: Through the interpreter.

KERZHNER - CROSS - DRANGEL

1 A It's probably for sunflower seeds. He paid for the
2 sunflower seeds and we reimbursed him.

3 THE COURT: So \$66,000 is for sunflower seeds?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 THE WITNESS: That's the price of a container, yes.

7 THE COURT: Go ahead.

8 BY MR. DRANGEL:

9 Q Is that your signature on all these checks?

10 A Yes.

11 Q And most of the checks seem to reference in the memo
12 section C-O-N-T.

13 Does that mean container?

14 A Where is it, C-O-N-T?

15 Q Now in the memo section of the check, on a number of
16 pages, 278, 276 says "payment for C-O-N-T".

17 A Some say "PO," that's purchase order, some say "invoice
18 number".

19 Q Okay. And page 280 indicates "container for Roshen,"
20 check number 4076, signed by you.

21 A Okay.

22 Q And I believe we discussed earlier that Roshen was the
23 contract that Gregory Vernikov's Interpage had; is that
24 correct?

25 A Yes.

1 Q And this check is dated when?

2 A 2010.

3 Q And that's during the period of time that Gregory
4 Vernikov was an employee of Threeline; is that correct?

5 A Yes.

6 Q And is every single one of these checks made out to
7 Interpage Co.?

8 A My QuickBooks on my computer had it set up that way. I
9 don't know.

10 Q Actually, if you look later on, 284 says direct payment
11 to Gregory Vernikov.

12 A Yes.

13 Q This is not the same Interpage Co. Inc. that you referred
14 to, correct?

15 A Yes.

16 Q I'm going to draw your attention to Defendants'
17 Exhibit MM, double M.

18 Do you know what this document is?

19 A Yes.

20 Q What is it?

21 A It's an Interpage Company Co. Inc.

22 Q Who maintained this record book? Was it --

23 A It's our partner, Norman Katsnelson, opened this company
24 in 2010.

25 Q Do you know if this document was ever actually signed by

1 anybody?

2 A No, it was only a verbal contract.

3 Q And have you ever seen the actual black book that it came
4 in? Did it come in a black book?

5 A Yes, it was a thick book.

6 Q Okay. And did a stamp come with that?

7 A Probably.

8 THE COURT: Do we have it?

9 MR. DRANGEL: We have the stamp.

10 THE COURT: No, do we have something that's signed?

11 MR. DRANGEL: We do not, because we do not believe
12 it was ever signed.

13 THE COURT: That's okay. All right, next question.

14 BY MR. DRANGEL:

15 Q Okay. And we have referenced two contracts earlier, or
16 you did, Franz Tress and ALB-GOLD agreements.

17 Correct? Are you familiar with those?

18 A Yes.

19 Q And those were Plaintiff's Exhibit 16 and Plaintiff's
20 Exhibit 18.

21 A Okay.

22 Q Can you just take a quick look at that?

23 A I don't know.

24 Q Okay. If a stamp existed for Interpage Co. Inc., why was
25 it not used on those documents?

1 A Because Gregory used that stamp.

2 Q But isn't --

3 A We did not.

4 Q -- it your testimony that Gregory signed those documents
5 on behalf of Interpage Co. Inc.?

6 A Which documents?

7 Q The agreement that I just referenced you to.

8 A I don't understand.

9 THE COURT: Plaintiff's Exhibit 16 and 18.

10 Q You testified earlier that Gregory signed those documents
11 on behalf of Interpage Co. Inc.; is that correct?

12 A Yes.

13 Q And is there a stamp on those documents?

14 A Yes.

15 Q And is that the Interpage Co. stamp of Gregory Vernikov?

16 A Yes.

17 Q That we referenced earlier on the Brivais Vilnis
18 contract; is that correct?

19 A Probably.

20 Q So why would he not use an Interpage Co. Inc. stamp that
21 you said exists when executing this agreement --

22 MR. FILOSA: Objection.

23 Q -- of Interpage Co. Inc.?

24 MR. FILOSA: Objection calls for speculation.

25 THE COURT: Overruled.

1 Do you know why?

2 THE WITNESS: Because as a course of -- during the
3 course of business, we did not distinguish between the
4 Interpage Co. and Interpage Co. Inc. until the proceedings.

5 THE COURT: Until what proceedings? This lawsuit?

6 THE WITNESS: Yes, until this here.

7 Q Right, well, isn't it true that you actually understood
8 that this agreement was -- both of these agreements were
9 entered by Interpage Co. and not Interpage Co. Inc.?

10 A No, I did not distinguish it because we did business as
11 Interpage and Threeline at the same time.

12 Q I'm going to draw your attention to your testimony from
13 your deposition, which I'm going to put up on the screen so
14 you can see it. It's page 70, line 12 through line 16. Take
15 a look at that.

16 And I'm asking you questions about a Franz Tress
17 agreement, didn't you testify?

18 "QUESTION: Who has the agreement with Franz Tress
19 as far as you know? Threeline or Interpage? And Interpage,
20 when we were talking about this, was Interpage Gregory
21 Vernikov's Interpage."

22 And you answered:

23 Interpage signed the contract with them, but with
24 them for us.

25 MR. FILOSA: Again, Your Honor, I'm just going to

KERZHNER - CROSS - DRANGEL

1 object to the extent that the transcript will speak for
2 itself, for which entity is being referring to there, but
3 subject to that objection.

4 THE COURT: All right.

5 Q At the time of this deposition, wasn't it your position
6 that Gregory Vernikov's company signed the Franz Tress
7 agreement for your benefit, for Threeline's benefit?

8 A Yes, for Threeline.

9 Q But it was Interpage Co., Gregory Vernikov's company,
10 that signed.

11 Wasn't it your testimony that Interpage Co. signed
12 it?

13 A Well, no, it said Interpage Co. Inc., but for me it was
14 not important.

15 THE COURT: You might have exhausted this area.

16 BY MR. DRANGEL:

17 Q Okay, with regard to Interpage Co. Inc. company, do you
18 know if that company ever conducted any business?

19 A There was several transfers. We had several contracts
20 with -- under Interpage name, and Gregory's account was
21 closed, so there was some transactions.

22 Q So there were some transactions from the Interpage Co.
23 Inc. bank account, correct?

24 A No, from us.

25 THE COURT: The question is: Did Interpage Co. Inc.

KERZHNER - CROSS - DRANGEL

1 do any business at all?

2 THE WITNESS: That's us and, yes, we did business.

3 THE COURT: As -- as --

4 MR. DRANGEL: Interpage Co.

5 THE COURT: Interpage Co. Inc.

6 You're saying that you did business as Interpage Co.
7 Inc. under that name? Is that what you're saying?

8 THE WITNESS: Yes.

9 THE COURT: Name a transaction that you did under
10 Interpage Co. Inc.

11 THE WITNESS: In our products, our private labels
12 had that name that said distributor is Interpage.

13 THE COURT: But so did Interpage -- never mind. Go
14 ahead.

15 BY MR. DRANGEL:

16 Q Those same packaging that you referenced, didn't they
17 also identify Gregory Vernikov and his cell phone number on
18 them?

19 A Not in all of them.

20 Q And with regard to the transactions, wouldn't these
21 transactions have been processed through the Interpage Co.
22 Inc. bank account?

23 A There was some transactions, I don't remember which ones
24 exactly, that went through Interpage Co. Inc. in 2009.

25 THE COURT: Are there any records to that?

KERZHNER - ~~4110~~ CROSS - DRANGEL

1 MR. DRANGEL: I would like you to look at
2 Defendants' Exhibit double N, as in Nancy. In response to
3 discovery request, this is the bank accounts records that were
4 produced in connection with Interpage Co. Inc., and the
5 representation was made that these were the complete bank
6 account records for that company.

7 Q Can you show me any transactions that occurred for this
8 company?

9 A There are some transactions there, but I don't remember
10 what they were.

11 MR. DRANGEL: We'll give you a minute to look
12 through it to see if you see any.

13 (Whereupon, the witness is reviewing the document.)

14 THE COURT: Are these the complete records?

15 MR. DRANGEL: These are the complete records that
16 were turned over.

17 A All financial operations were going through Threeline
18 Imports, but I don't remember which.

19 Q So there was no QuickBook accounts for Interpage Co.
20 Inc.?

21 A No, there is no QuickBooks.

Interpage also doesn't have any QuickBooks at all.

23 Q Do you know if there were ever any tax returns filed on
24 behalf of Interpage Co. Inc.?

25 A I'm sure there were.

1 MR. DRANGEL: We would ask for the production of
2 those, and they were not produced.

3 THE COURT: So no tax returns?

4 So were they filed?

5 THE WITNESS: I think there were two years or
6 something that was filed, but I need to find out from
7 accounting if there were any.

8 THE COURT: Well, shouldn't that have happened
9 already?

10 THE WITNESS: No one asked me about it. I did not
11 know.

12 BY MR. DRANGEL:

13 Q As far as these bank statements, what's the address
14 identified on the bank statements?

15 A 41 Terrace Place.

16 Q Is that Threeline's address?

17 A This is the address for Trilini International, address of
18 our partners, Threeline's partners.

19 Q Okay, earlier you testified that you believed that as of
20 2009, Gregory Vernikov did not have an Interpage Co. business.

21 Do you still stand by that statement?

22 A There was a time when the bank account was closed.

23 THE COURT: All right. You can move on.

24 MR. DRANGEL: Thank you.

25 Q You had testified earlier that you're unaware that

1 Delicious Wonders appeared on the packaging before you
2 actually opened the products when they arrived in
3 January 2013; is that correct?

4 A Yes.

5 Q Okay. Were you aware of Delicious Wonders products
6 before January 2013?

7 A Yes.

8 Q Were you aware that Gregory Vernikov was somehow
9 associated with the company that owned the Delicious Wonders
10 trademark?

11 A I knew that it was not his name, it was somebody else's
12 name.

13 And he was associated with only frozen cakes.

14 Q Did you know that Delicious Wonders product was applied
15 to a cod liver product?

16 A No.

17 Q Threeline ever sell a cod liver, Delicious Wonders
18 product?

19 A It was never brought to my attention, I don't know.

20 Q I'm going to ask you to look at Defendants' Exhibit
21 double N.

22 Is there a number of sample labels that were sent to
23 you which correspond with Plaintiff's Exhibit 6 through 8.

24 A Uh-huh.

25 Q You're familiar with these?

1 A Yes, that's something I talked about earlier.

2 Q Okay, and you had seen each of these products when
3 ordering the product, correct?

4 A One more time?

5 Q And you had seen each of these mockup invoices -- sorry,
6 mockup labels before ordering the Delicious Wonders ALB-GOLD
7 product; is that correct?

8 A Honestly, I don't remember if there was the Delicious
9 Wonders logo there. That's not something that bothered me.
10 What bothered me was the chicken logo.

11 Q Okay. Each and every one of these mockup labels does
12 identify Delicious Wonders, correct?

13 A No.

14 If you look at page 382.

15 Q Okay, the majority of them do; is that correct?

16 MR. FILOSA: Object to form.

17 THE COURT: Overruled.

18 Q And you never expressed a concern to Mr. Vernikov that
19 you did not want to use Delicious Wonders on the products?

20 A We did not even think about the Delicious Wonders' logo
21 about having it there or using it. We were not discussing
22 Delicious Wonders. We were just discussing the image.

23 THE COURT: Which exhibit are you on?

24 MR. DRANGEL: Defendants' Exhibit double A, Your
25 Honor.

1 A What we were looking at was the image.

2 THE COURT: There's not a question for the witness
3 right now.

4 Q If you can take a look at Defendants' Exhibit -- sorry,
5 Plaintiff's Exhibit 11, and Plaintiff's Exhibit 12.

6 A Okay.

7 Q Are you familiar with these invoices?

8 A Yes, I said before that they look familiar to invoices I
9 had seen them.

10 Q And you personally processed these invoices?

11 A Yes.

12 Q These are dated December 2012, correct?

13 A Yes.

14 Q And each of these products exclusively notes the product
15 as Delicious Wonders followed by what type of pasta product
16 that is; is that correct?

17 A Yes.

18 Q When you received these invoices, you made no mention to
19 Lenny or Gregory with an objection to the use of the Delicious
20 Wonders trademark; is that correct?

21 A Yes, my objective was to check the price and the quantity
22 in the container.

23 THE COURT: So you did complain?

24 THE WITNESS: I not even paid attention that it was
25 Delicious Wonders.

1 THE COURT: Okay.

2 THE WITNESS: The next bandnudeln, no, I did not
3 really understand what it was.

4 THE COURT: Okay, next question.

5 BY MR. DRANGEL:

6 Q Sorry, Your Honor.

7 Okay, if you can turn to Plaintiff's Exhibit 66,
8 which we discussed earlier.

9 A Okay.

10 Q Can you tell me what that is?

11 A I mentioned before that it was a record of pasta 755 that
12 was in the container.

13 Q Okay, and who printed out that document?

14 A Maybe I did.

15 Q Who else would have had access to be able to print out
16 that document?

17 A Our accountant.

18 Q And what did that show? That document?

19 A How the pasta was sold and to whom, the quantity. And
20 boxes.

21 Q Okay. And in the memo section, is it clear that 755
22 product was referenced within your QuickBook database as
23 either DW or Delicious Wonders pasta products?

24 A Yes.

25 Q And is that the same for all the other pasta products

1 that you purchased from ALB-GOLD?

2 A The girl that was entering the data entered as it was
3 presented on the invoice.

4 THE COURT: Is it time to take a break?

5 MR. DRANGEL: That's fine.

6 THE COURT: How much longer do you have with this
7 witness?

8 MR. DRANGEL: Another half hour.

9 THE COURT: Let's just take five or so minutes, all
10 right?

11 MR. DRANGEL: Sure.

12 THE COURT: Your witness is on cross-examination, so
13 I don't know how you all feel about that.

14 No, I just wanted to make sure if everybody was
15 aware. All right.

16 (Whereupon, a recess was taken at 4:17 p.m.)

17 THE COURTROOM DEPUTY: All rise.

18 THE COURT: Everybody can sit down.

19 THE COURTROOM DEPUTY: The witness, you are reminded
20 you are still under oath.

21 THE COURT: All right. Go ahead.

22 BY MR. DRANGEL:

23 Q Before the break, we had taken a look at the document,
24 which is the sale of product GP30755.

25 THE COURT: What exhibit are we on?

1 MR. DRANGEL: Now, I'm going to bring us to the next
2 one.

3 That was.

4 MR. WOLGANG: Sorry, what was that?

5 THE COURT: Its okay. Just go to the next one.

6 Q I'm going to ask you to take a look at Defendants'
7 Exhibit BD; B as in boy, D as in dog.

8 A Okay.

9 MR. DRANGEL: Your Honor, this is a report for the
10 same number as the exhibit we just looked at, Plaintiff's
11 Exhibit 66.

12 THE COURT: Okay.

13 MR. DRANGEL: The only difference is that the memo
14 section, every single reference to Delicious Wonders was
15 removed. As I discussed in my opening statement, there were
16 two QuickBook databases that were produced to us during the
17 course of discovery.

18 THE COURT: So just do me a favor and show me an
19 example of what you're talking about.

20 MR. DRANGEL: And so if you put side by side
21 defendants -- sorry, Plaintiff's Exhibit 66 --

22 THE COURT: Right.

23 MR. DRANGEL: -- and defendants, what I showed you
24 Defendants' BD --

25 THE COURT: Right.

1 MR. DRANGEL: -- you will see that these are the
2 same exact inventory reports, one produced -- actually it's
3 been produced in a paper version of it itself, and then I
4 printed out this from the QuickBook database, DB.

5 And every single reference where the memo section of
6 their document said "Delicious Wonders" but was removed in
7 this database that was produced to us. They actually went
8 through the database and removed every single reference to
9 Delicious Wonders.

10 And if you want, you can go through the next couple
11 of pages, you can see what we did was we pulled out specific
12 invoices.

13 THE COURT: So my question -- I'm not a
14 hundred percent, I can see that they are different. Which --
15 are you saying that this document was altered?

16 MR. DRANGEL: Yes.

17 THE COURT: Which one?

18 MR. DRANGEL: Well, that's what I'm showing you.

19 THE COURT: Just tell me, is it yours or it is --

20 MR. DRANGEL: Mine. Mine.

21 THE COURT: Yours.

22 So this is what was turned over to you?

23 MR. DRANGEL: Well, initially, yes. The one that
24 was turned over to us was -- in paper format was this without
25 Delicious Wonders. But if you actually go through to IPV2063

4127
PROCEEDINGS

1 within the document.

2 THE COURT: What is that?

3 MR. DRANGEL: Okay, that is a screen shot of what
4 happens when you click on the invoice number 37768, which is
5 shown in IPV2062. And what that indicates in the note section
6 is that someone named Maya edited this document on March 20th,
7 2016.

8 THE COURT: All right, so when did this one,
9 Plaintiff's 66, is that the original? Is that the way it's
10 supposed to be?

11 MR. DRANGEL: Correct.

12 THE COURT: That's the unaltered one.

13 MR. DRANGEL: Right. The unaltered one was the one
14 that was produced, and they produced it in order to avoid
15 showing that this product was identified as Delicious Wonders.

16 THE COURT: Wait, I'm confused, you're -- just so I
17 know. The one that you were given is your exhibit, correct?

18 MR. DRANGEL: We were actually given both of them.

19 THE COURT: At the same time?

20 MR. DRANGEL: Well, Threeline produced this
21 documented after in the course of litigation.

22 THE COURT: Which document?

23 MR. DRANGEL: Sorry. 66.

24 THE COURT: All right. So that the came off.

25 After what?

1 MR. DRANGEL: After we had already been made aware
2 that they had removed Delicious Wonders from every single
3 reference in the QuickBook database.

4 THE COURT: And when did you get the one without the
5 Delicious Wonders? Was that before the injunction?

6 MR. DRANGEL: No nothing happened before the
7 injunction. This happened during the course of discovery in
8 March.

9 THE COURT: How much time separates the two
10 disclosures?

11 MR. DRANGEL: Two days. They realized -- I'm not
12 exactly sure what happened, but they decided to replace the
13 tampered with one with the --

14 THE COURT: The real one. All right.

15 Do you want to say something?

16 MR. WOLGANG: Yes, Your Honor, I do.

17 I'm going to object to any use of this document or
18 any questioning of the witness about this document. And I
19 thank the Court for asking the questions they just asked,
20 because I want to lay out the chronology of what happened
21 here.

22 THE COURT: Do you want me to compare it with the
23 witness here? I mean there's no jury here.

24 If this was what was originally turned over, I mean
25 that's a thing. That's what -- and I'll draw whatever

4129
PROCEEDINGS

1 inference.

2 MR. ROSENBERG: Well, the point is we don't want the
3 Court to draw an inference, which I think is both unfair and
4 very prejudicial. I would like the Court to know exactly what
5 happened and the time it happened before you make that
6 inference.

7 THE COURT: I haven't done anything yet. I see them
8 both.

9 Does this witness have -- can this witness shed
10 light on it? It seems to me like it's an appropriate subject
11 for cross-examination.

12 MR. ROSENBERG: I think my office can shed light on
13 it.

14 THE COURT: Well, let's finish with this witness and
15 then -- I mean, it's in evidence. They're both in evidence.
16 And the way this generally works is you can both argue what
17 inference I should draw from it.

18 I don't think now is the time for you to be
19 describing what your role is, the witness is on the stand,
20 she's being cross-examined.

21 So let's finish the cross soon, and then you can
22 make whatever arguments you want to make about it.

23 MR. ROSENBERG: Your Honor, just so we're all on
24 same ground rules here, I thought you said earlier that unless
25 we object, everything on the witness list would be deemed to be

1 admitted.

2 THE COURT: You're objecting.

3 MR. ROSENBERG: We are now objecting to this.

4 THE COURT: And your objection is overruled. Okay?

5 All right, go ahead.

6 MR. DRANGEL: Thank you, Your Honor.

7 BY MR. DRANGEL:

8 Q Ms. Kerzhner, the document that I was just discussing
9 with the Judge that says "edited by Maya," did you actually
10 make a change to this document?

11 A Which one? The disc.

12 Q Sorry, BD. And I'm talking about document number
13 IPV2063.

14 THE COURT: 2063. And the question to the witness
15 is: Did she make changes to the document; is that correct?

16 MR. DRANGEL: Right.

17 THE COURT: What's the answer to that question?

18 A At some moment they demanded of us our QuickBook
19 documents and reports. There was a lot of talk about DW.

20 THE COURT: Okay, that means Delicious Wonders,
21 right?

22 THE WITNESS: Yes.

23 We never wanted to use Delicious Wonders, and it
24 happened so that the Delicious Wonders was entered into the
25 computer system.

1 THE COURT: Okay, here's the question:

2 Who entered Delicious Wonders into the computer
3 system?

4 THE WITNESS: A female that works at data entry.

5 THE COURT: Under your direction?

6 THE WITNESS: Yes.

7 THE COURT: And who took Delicious Wonders out?

8 THE WITNESS: I did.

9 THE COURT: Okay. And when did you do that?

10 THE WITNESS: When Gregory raised the big issue that
11 we are using Delicious Wonders.

12 THE COURT: So what date was that?

13 THE WITNESS: I don't remember the exact -- I don't
14 remember --

15 BY MR. DRANGEL:

16 Q Well, would it refresh your recollection if you look at
17 this document, it says "last edited on March 20th, 2016 by
18 Maya"?

19 A Yes, March 2016.

20 THE COURT: So you changed it on that date, right.

21 THE WITNESS: Yes.

22 THE COURT: All right. Next question.

23 Okay, let the lawyer asks you questions.

24 BY MR. DRANGEL:

25 Q Okay. And why did you make that change to the database?

1 A Well I was so stressed because of all that DW, DW
2 bothering me, and I decided let's just get rid of the DW.

3 And that same day I told my son that I did this, and
4 then he told me that I should not have done that.

5 THE COURT: So what did you do?

6 THE WITNESS: He then called the lawyer and the
7 lawyer called the judge or the assistant of the judge and
8 informed that they would provide the database so that they
9 don't have to look at that other document.

10 It was not done intentionally, it was just done
11 because of the stress. Because the attorney was stressing us
12 a lot.

13 THE COURT: Okay. Go ahead.

14 BY MR. DRANGEL:

15 Q I'm going to refer you to the declaration of your
16 husband, Leonid Kerzhner, which is Exhibit double R.

17 A Okay.

18 Q Are you familiar with the declaration?

19 A Okay.

20 Q You are aware that in support of his declaration there
21 was a check that was referenced as representative of a payment
22 for the development of the chicken and egg logo; is that
23 correct?

24 A Yes.

25 Q Okay. And can you point out that check to me in

KERZHNER - CROSS - DRANGEL

1 Plaintiff's Exhibit -- sorry, Defendants' Exhibit double R?

2 THE COURT: Do you just want to tell me what you're
3 talking about so we can move this along?

4 Why don't you reask the question.

5 Q Can you point out the check -- I'm also going to
6 reference --

7 THE COURT: Where's the check?

8 MR. DRANGEL: To speed it up. Defendants'
9 Exhibit SS and Defendants' Exhibit TT.

10 Q Okay, and there's a check referenced, it says "circle the
11 check" in that exhibit.

12 Is that the check that was supposedly paid to Pravda
13 for selling the chicken and egg logo?

14 THE COURT: So that's the question, it's really
15 quite simple.

16 Is this the check that was written to Pravda for the
17 logo.

18 So the answer is "no".

19 THE WITNESS: No.

20 THE COURT: Okay, next question.

21 BY MR. DRANGEL:

22 Q At the preliminary injunction hearing, it was your
23 testimony that a check was paid to Pravda Media for the
24 development of the chicken and egg logo; is that correct?

25 A Yes, I didn't realize --

1 THE COURT: Let him --

2 A Yes, I didn't realize it, and I knew that we were in
3 contact with Pravda Media to develop the logo, that I was in
4 contact with Pravda's Media, and I wrote out the check but
5 I -- and the time frame of the check matched that time frame,
6 so I thought this was the check for it.

7 But when we investigated it further, we found out
8 that this was, in fact, for canned meat that also Gregory
9 handled.

10 THE COURT: Canned meat, is that what you said?

11 THE WITNESS: Canned meat, yes.

12 Q And I believe you testified in January of 2016, that you
13 discovered this after ALB-GOLD visited you, in the summer of
14 2015?

15 THE COURT: You have to let the interpreter
16 interpret.

17 THE WITNESS: Okay.

18 A I don't remember when I realize it, but as we looked
19 through documents, I realized that this check was not to
20 Pravda Media -- it was to Pravda Media but for another item.

21 Q But you did have this realization before the date of the
22 deposition where you told me that your testimony was false,
23 correct?

24 THE COURT: Let him finish the question.

25 Go ahead.

1 Q You were aware that this payment was not made for
2 development of the chicken and egg trademark before
3 January 21st, 2016, the date of your deposition; is that
4 correct?

5 A When I found out about it, I spoke before the judge or at
6 a deposition that this check I identified by mistake that it
7 was for another item to Pravda Media. I never take this back.

8 Q But in your testimony that day, you indicated that you
9 had known about this since the previous summer; is that
10 correct?

11 A I did not say. I do not remember.

12 Q With regard to the check itself, did you -- actually, it
13 indicates that the check or this whole slew of checks have
14 been redacted; is that correct?

15 A Yes.

16 Q Okay. And did you actually do the redactions on this
17 page?

18 A No.

19 Q Do you know who did the redactions?

20 THE COURT: Wait, wait, wait you have to wait for
21 the interpreter.

22 A No.

23 Q Do you know who did the redactions on this page?

24 A No. I don't know.

25 Q You see the handwriting in the upper right-hand corner

1 says "redacted".

2 Do you know whose handwriting that is?

3 A I do not know.

4 Q Is that your son, Alex Kerzhner's, handwriting?

5 A Maybe.

6 Q And as far as redactions, the redactions would be the --
7 the lines through all the designations in black, correct?

8 A Yes.

9 MR. DRANGEL: Okay. Your Honor, after seeing this,
10 we would ask for the production of the actual check and were
11 produced Exhibits SS and TT direct from HSBC bank.

12 And if you'll take a look at those references,
13 you'll see that the redactions --

14 THE COURT: Which you can see through, by the way.

15 MR. DRANGEL: -- are black.

16 THE COURT: Yes.

17 MR. DRANGEL: But if you look at the memo section
18 for the check that was allegedly redacted, you can see that
19 it's whited out. So we can see that there were -- it wasn't
20 blacked out, it was actually whited out.

21 THE COURT: Okay.

22 MR. DRANGEL: So it didn't follow the format of all
23 the other redactions here, so it seems curious to us, so we
24 requested that the other documents be produced through the
25 magistrate.

1 And what we received were the form of documents
2 tabbed as SS and TT. And what those documents show is that
3 the memo section actually says "for Interpage Co." So
4 somebody whited these out prior to the preliminarily
5 injunction hearing.

6 Q Was that done for the purpose of concern over that --
7 it was clear that the chicken and egg logo was actually
8 created for Interpage Co. and not Interpage Co. Inc., or
9 anybody else?

10 A I had no intention of doing that. The check is signed by
11 me and it was issued by me, but I don't know who wrote that
12 memo for Interpage.

13 THE COURT: The question is: Do you know who
14 crossed it out?

15 THE WITNESS: I do not know. I do not even know who
16 wrote this here for Interpage.

17 And it doesn't say Interpage Inc., it just said
18 Interpage only, and it wouldn't have bothered me anyways.

19 THE COURT: Is it the case that the crossing out was
20 done before the hearing in front of Judge Cogan?

21 THE WITNESS: I do not know.

22 THE COURT: Does Judge Cogan know about this?

23 MR. FILOSA: He does, Your Honor.

24 MR. DRANGEL: How does Judge Cogan know about this?

25 MR. FILOSA: May I.

1 THE COURT: Sure.

2 MR. FILOSA: This was raised in support of
3 defendants' second motion to vacate the preliminary
4 injunction. It was extensively briefed. Judge Cogan denied
5 that motion. It was also raised as part of the plaintiff's
6 proposed third motion for reconsideration over which Your
7 Honor presided over a pretrial conference.

8 THE COURT: I think the issue there was whether
9 there was a trademark at the time. I think that was what the
10 issue was.

11 MR. FILOSA: But again, with respect -- certainly on
12 the second motion for reconsideration, it was -- the check was
13 submitted as an exhibit. That issue was considered. It was
14 rejected by Judge Cogan.

15 THE COURT: How much more? Can you wrap it up?

16 MR. DRANGEL: Yes, I'm trying. Sorry.

17 THE COURT: That's fine.

18 BY MR. DRANGEL:

19 Q Okay, I'm going to ask to you take a look at Defendants'
20 Exhibit double zero, double O.

21 A Okay.

22 Q Okay, are you familiar with this email? Generally?

23 A Okay, yes, I'm familiar.

24 Q Can you tell me what it's about?

25 THE WITNESS: (In English.) It's about --

KERZHNER - CROSS - DRANGEL

1 THE COURT: Let the interpreter speak.

2 Can you translate that for me, the email?

3 THE INTERPRETER: Yes.

4 MR. DRANGEL: I was going to get to that.

5 THE COURT: Let's get there right now. What does it
6 say?

7 THE INTERPRETER: Leonid, this is the final version
8 of labels for bullheads. Let me know if there are any
9 comments.

10 THE COURT: Okay.

11 BY MR. DRANGEL:

12 Q Okay, is this a product that was for Interpage Co. or
13 Threeline?

14 A All products are for Threeline.

15 Q Okay, but you didn't register a trademark for this; did
16 you?

17 A No.

18 Q And the time period of this is nearly the exact time
19 period of the discussions about the ALB-GOLD label,
20 October 2012; is that correct?

21 A Yes.

22 Q And the label says "Interpage International, imported
23 by," correct?

24 A Yes.

25 Q Okay. And this actually says the same exact thing that

1 was said in the email to Leonid at Plaintiff's 52 regarding
2 the ALB-GOLD agreement; is that correct?

3 A Yes.

4 Q Did you purchase Bullhead products from Interpage Co,
5 Gregory's Interpage Co.?

6 A I repeat, I -- we did not purchase from Interpage. He
7 worked for us as a buyer and he did negotiations on our
8 behalf.

9 Q Do you know if he sold this product, this Bullhead
10 product?

11 A I don't remember if it was the Bullhead. I remember that
12 it issue or not, I'm not sure, but me and Leonid will speak
13 more about it.

14 Q Well, actually, let's ask you about it, since you seem to
15 know more about it than he would.

16 THE COURT: Don't argue with the lawyer.

17 Next question.

18 Q Why don't we take a look at the following exhibit,
19 Defendants' Exhibit double P.

20 A Okay.

21 Q Can you tell me what this is?

22 A I know what it is.

23 Q Can you let me know what that?

24 A FDA paperwork.

25 Q Okay. Can you describe what happened here in this

1 situation?

2 A We bought products that were goods for consumption,
3 canned fish. And Gregory had many problems with the FDA.

4 One day several people from the FDA came regarding
5 these products. He was not in the office and I showed this to
6 him.

7 Q Okay. And whose products were those? Were those
8 Threeline's or Interpage's?

9 A We had no differentiation between Threeline or
10 Interpage --

11 THE COURT: First of all, you have got to stop
12 interrupting --

13 THE WITNESS: (In English.) Okay.

14 THE COURT: -- the interpreter.

15 What was your answer to that question? There's no
16 difference between you and Interpage?

17 THE WITNESS: Yes.

18 THE COURT: I take it you're going to get to that
19 page 38, right?

20 MR. DRANGEL: Yes.

21 THE COURT: Let's go there now.

22 BY MR. DRANGEL:

23 Q Okay, if you can take a look at page 38.

24 Was this document signed by you, if you look at
25 page 39?

1 A Yes.

2 Q Okay. And identified on this -- in this batch of
3 products is Bullhead tomato sauce products, correct?

4 A Yes.

5 Q And as part of this declaration I'm going to read to you
6 in the middle of the paragraph of 2038, it says:

7 "Mr. Gregory Vernikov of Interpage is responsible
8 for this shipment, and I am only renting him an office and
9 goods space in the warehouse."

10 Is that a correct statement?

11 A It was an incorrect translation. There were a lot of
12 them, I was nervous, I saw it later on. I just wanted to have
13 it signed so that they would leave me alone.

14 THE COURT: Did you ever call them to correct it?

15 THE WITNESS: No, we had tried to reexport it to
16 Canada, these goods.

17 BY MR. DRANGEL:

18 Q What would you have corrected about this statement?

19 A That he was renting a space, that he just -- that he was
20 renting a space there, I would change it to that he was
21 keeping his goods there that had the name Interpage on it.

22 Q And the date of this declaration is actually October 8th,
23 2009. Is that the time period when Mr. Vernikov was actually
24 an employee of Threeline?

25 A Yes.

1 Q Thank you.

2 You indicated that you -- the transactions that were
3 taking place for payments in euros that were made by Trilini
4 International.

5 A Yes.

6 Q In connection with those payments, you actually made a
7 3 percent service fee to Trilini International; is that
8 correct?

9 A Yes.

10 Q Do you know what that 3 percent service fee covered?

11 A Yes, they had better rates, and they made payments for us
12 wherever we needed to immediately.

13 I did not have to work on it, because transactions
14 overseas is complicated, and they would provide that service
15 for me with better rates.

16 Q Do you know if that 3 percent was the actual fee paid by
17 Trilini International for the actual transaction from U.S.
18 dollars to euros?

19 A I just know that I paid 3 percent to Trilini
20 International for transactions.

21 Q And you never questioned what the amount was applied to?

22 A No, we just had an oral agreement that they would do the
23 transfers, and I paid the 3 percent.

24 Q I'm just going to draw your attention to Plaintiff's
25 Exhibit 27, again.

1 Okay, are you familiar with this?

2 (Whereupon, the witness is reviewing the document.)

3 Q Is a warning letter that you had discussed earlier in
4 your testimony.

5 What's the date of that letter?

6 A I don't see a date.

7 Q Do you know the date that the warning letters were sent
8 out by your son?

9 A It's better to ask him those questions. I don't
10 remember. And this doesn't have dates on it.

11 MR. DRANGEL: Your Honor, we actually have
12 stipulated to that. Specifically in the stipulation, we have
13 paragraph 24 indicates March 20th, 2015, a cease and desist
14 letter was sent.

15 Q You had testified earlier, though, that in the summer of
16 2013, following Gregory leaving, customers had complained
17 about Gregory Vernikov continuing to sell; is that correct?

18 A The clients, they did not complain about the products,
19 they said that our products were priced too high and Gregory's
20 products -- our clients said that our products with our logo
21 was being sold by Gregory for a lower price under the name of
22 Threeline, the same as Trilini before.

23 Q And again, that was -- that took place in the summer of
24 2013; is that correct?

25 A Yes.

1 Q Okay, and that's almost two years before you sent a
2 warning letter; is that correct?

3 THE COURT: That's either a "yes" or "no" answer.

4 Two years before you sent the warning letter,
5 correct?

6 THE WITNESS: Maybe.

7 BY MR. DRANGEL:

8 Q Why did you wait so long to send a warning letter?

9 A We did not wait, we were working.

10 Q An injunction was issued against my client a year and a
11 half after or, actually, almost two years after you knew about
12 it; is that correct?

13 A Yes, we had many issues after he left. And that was
14 the -- this wasn't the first issue that we needed to handle.

15 Q ALB-GOLD products, do you know if they're all kosher?

16 A They have kosher products, if they are produced in their
17 plant.

18 Q All products that you sold to them are all kosher?

19 A Except for nests.

20 Q When did Threeline first obtain a UPC code?

21 A A month after Gregory left, I purchased 1500 UPC codes
22 for \$125.

23 MR. DRANGEL: I have no further questions, Your
24 Honor.

25 THE COURT: All right, any redirect?

KERZHNER - REDIRECT - FILOSA

1 MR. FILOSA: Very brief, Your Honor.

2 THE COURT: Okay.

3 REDIRECT EXAMINATION

4 BY MR. FILOSA:

5 Q Ms. Kerzhner, what is Brivais Vilnis?

6 A It's a company that produces canned fish.

7 Q All right. Does Brivais Vilnis manufacture pasta
8 products?

9 A No.

10 Q Did Threeline ever purchase any product from Brivais
11 Vilnis bearing a chicken and egg label?

12 A No.

13 Q Did Threeline ever sell any product from Brivais Vilnis
14 bearing a chicken and egg label?

15 A No.

16 Q What are bullheads?

17 A Also a canned fish.

18 Q Did the Bullhead product that was exhibited on
19 Defendants' Exhibit 00, did that ever have a chicken and egg
20 logo on it?

21 A No.

22 Q At any time did Threeline ever express any interest in
23 selling a Bullhead under a chicken and egg logo?

24 A No.

25 Q In 2013 when -- in the summer of 2013 when you testified

KERZHNER - REDIRECT - FILOSA

1 that Threeline discovered that Mr. Vernikov was selling pasta
2 product under the chicken and egg label, do you know who the
3 manufacturer of that pasta product was?

4 A ALB-GOLD.

5 MR. FILOSA: No further questions, Your Honor.

6 THE COURT: Anything else?

7 All right, you can step down.

8 (Whereupon, the witness was excused.)

9 THE COURT: Can I see the lawyers at sidebar for a
10 second.

11 (Continued on the next page.)

12 (Sidebar conference.)

13

14

15

16

17

18

19

20

21

22

23

24

25

SIDEBAR CONFERENCE

1 THE COURT: All right, so what's tomorrow?

2 THE COURT REPORTER: Not tomorrow, the day after.

3 THE COURT: Oh, that's right, we're off tomorrow.

4 MR. FILOSA: So we're Thursday, I believe.

5 THE COURT: I thought we were off tomorrow?

6 You asked me for Wednesday off.

7 MR. DRANGEL: No, we asked for Thursday.

8 THE COURT: No, absolutely you did not. You asked
9 me for Wednesday off. I think you might have been confused
10 about the days, maybe. It was Wednesday, right? There's --
11 I --

12 MR. DRANGEL: Yes, we knew that we were supposed
13 correct it.

14 MR. FILOSA: We discussed this.

15 THE COURT: It doesn't matter. So you are here
16 tomorrow?

17 MR. FILOSA: Yes, if the Court's available tomorrow.

18 THE COURT: Did we schedule something else?

19 THE LAW CLERK: Can I talk to you for a moment?

20 THE COURT: Yes.

21 (Discussion was had off the record.)

22 THE COURT: We knew this because my clerk
23 rescheduled a doctor's appointment for tomorrow, so...

24 MR. DRANGEL: Sorry about that.

25 THE COURT: All right, what do we have tomorrow

SIDEBAR CONFERENCE

1 then?

2 MR. FILOSA: Mr. Kerzhner, Leonid and Alex, and the
3 remainder of our plaintiff's witnesses are appearing.

4 THE COURT: So it's the husband and the son?

5 MR. FILOSA: Yes.

6 THE COURT: And who else?

7 MR. FILOSA: And Roman Katsnelson. And then one
8 other gentleman, a nonparty from the --

9 THE COURT: I have to tell you, that wasn't good,
10 that testimony. Is the rest going to be like that? I mean --
11 and I'm not telling you anything that is big secret.

12 On line 1 a question is asked where the answer is
13 "yes," and the exact same question, the answer becomes "no"
14 within a space of two minutes.

15 So you need to really have a conversation with them.
16 I mean, maybe I'm missing something and maybe I don't
17 understand but, you know, there's also a lot of stuff in here
18 that is wildly improper, if it's true.

19 And if one of the witnesses is a lawyer is going to
20 be testifying about blotting things out, it's really, really
21 inappropriate behavior. And I'm sure you've discussed all of
22 this with them.

23 But if there are witnesses that are going to come in
24 here and say that they got phone calls, you know, in a lot of
25 parts of this town, that's a crime, both a federal one and a

4150
SIDEBAR CONFERENCE

1 state one.

2 So as I say, I'm not trying to, you know, go all
3 drama on your here, but, you know, this is a pretty serious
4 allegation about playing fast and loose with some of the
5 evidence.

6 Maybe there's an explanation for it, and maybe it's
7 not true. But it's rather astonishing, I have to say. And as
8 I say, there could be a completely innocent explanation for
9 all of it, and I'm not being sarcastic when I say that. It
10 just has a very bad sound, and it's not directed at you, by
11 the way.

12 MR. FILOSA: I appreciate that.

13 Let's take it in turn. The Pravda Media check,
14 again, that issue was raised before Judge Cogan.

15 THE COURT: Slow down just a little bit.

16 MR. FILOSA: It was raised before Judge Cogan and
17 was rejected.

18 THE COURT: It was rejected, but I'm not
19 Judge Cogan. It affects people's credibility if they are
20 tampering with evidence, and it seems to be pretty clear that
21 that's exactly what she did, and maybe the son, who's a
22 lawyer.

23 There are letters that are going out on their
24 different letterheads. There are all the kind of things that
25 are happening here that, as I say, there may be a perfectly

SIDEBAR CONFERENCE

1 innocent explanation for them. I mean, but I'm just kind of
2 perusing some of the stuff here, some of it doesn't look so
3 good.

4 MR. FILOSA: On the issue of the chicken and egg,
5 Your Honor, though, again, here the testimony is fairly
6 consistent, again, with respect to the creation of the chicken
7 and egg.

8 THE COURT: But it's -- but all I'm suggesting to
9 you is that if there were a jury here, a jury would be
10 instructed that in evaluating the credibility of a witness,
11 they could consider the entire witness' testimony and choose
12 whether to reject all of the testimony, or just a portion of
13 the testimony, if they found any of it incredible.

14 I mean, that's also just a simple fact of life of
15 common sense; if someone hears somebody being less than
16 truthful about subject A, the person may question their
17 credibility on subject B.

18 I'm not telling you anything you don't know, I'm
19 simply suggesting that you have a conversation with your
20 witnesses -- with your clients about what they're going to
21 with this case.

22 So, again, none of it is directed at you at all.
23 I'm just telling you the -- as I say, it's not -- like I'm not
24 telling you anything that all of us didn't hear in the
25 courtroom, so just something to think about. Okay?

SIDEBAR CONFERENCE

1 MR. DRANGEL: Your Honor, sorry, also just to add to
2 something, you're supposed to let two of my witnesses go
3 tomorrow because one of them flew in from Europe.

4 MR. FILOSA: I don't have a problem with taking a
5 witness out of turn.

6 MR. DRANGEL: And then I guess we'll go --

7 THE COURT: And let's just do them efficiently, all
8 right? Because a lot of things you don't have to prove to me,
9 because I'm not a jury. So if things are in evidence, you
10 argue from them, that's also fine.

11 So we're going to take some people out of turn
12 tomorrow?

13 MR. DRANGEL: Yes.

14 THE COURT: All right.

15 MR. FILOSA: So, wait, these are nonparties, are
16 they going to be here at 9:30 a.m.?

17 MR. ROSENBERG: I will have them here.

18 MR. DRANGEL: They're quick witnesses on a discrete
19 issue and that's it. So then you'll open the record tomorrow,
20 so you can release your witness. Okay.

21 THE COURT: All right. So you tomorrow.

22 MR. DRANGEL: Thank you, Your Honor.

23 MR. FILOSA: Thank you, Your Honor.

24 (End of sidebar conference.)

25 (Continued on the next page.)

4153
PROCEEDINGS

1 (In open court.)

2 THE COURT: So we'll start at 9:30 or 10 tomorrow?

3 MR. FILOSA: 9:30.

4 MR. ROSENBERG: 9:30.

5 THE COURT: I forgot you were coming from far away.

6 All right.

7 Thank you to the interpreter for your services.

8 THE INTERPRETER: My pleasure.

9 THE COURT REPORTER: Your Honor, may I close the
10 record?

11 THE COURT: You may.

12 (Proceedings adjourned at 5:03 p.m. to resume on
13 January 18, 2017 at 9:30 a.m.)

14

15 I N D E X

16

WITNESS PAGE

17

MALVINA KERZHNER

18

DIRECT EXAMINATION	BY MR. FILOSA	31
CROSS-EXAMINATION	BY MR. DRANGEL	102
REDIRECT EXAMINATION	BY MR. FILOSA	156

20

21

22

23

24

25